

# Rules Governing the Unauthorized Practice of Law

## 17B-001. Jurisdiction.

The Supreme Court, in the exercise of its jurisdiction to define the practice of law and to prohibit the unauthorized practice of law within the State of New Mexico, adopts the following rules, which shall govern proceedings concerning the unauthorized practice of law.

[Adopted by Supreme Court Order No. 13-8300-015, effective August 23, 2013.]

## 17B-002. Appointment of the Disciplinary Board.

A. **Powers and duties.** In addition to its powers and duties set forth in the Rules Governing Discipline, Rules 17-101 to -316 NMRA, the Disciplinary Board shall have jurisdiction to investigate, inquire into, and prosecute complaints or reports alleging the unauthorized practice of law submitted by any person, including chief disciplinary counsel, chief disciplinary counsel's designee, and other persons or entities.

B. **No limitation on other authority.** Nothing contained in these rules shall be construed as a limitation on any other civil remedy or criminal proceeding that may otherwise exist with respect to the unauthorized practice of law. Further, nothing contained in these rules shall be construed to limit or replace the Supreme Court's or the Disciplinary Board's powers set forth in the Rules Governing Discipline.

[Adopted by Supreme Court Order No. 13-8300-015, effective August 23, 2013.]

## 17B-003. Disciplinary counsel; duties and powers.

In addition to those duties and powers set forth in the Rules Governing Discipline, chief disciplinary counsel, or chief disciplinary counsel's designee, shall have the following powers and duties:

A. to investigate, or to refer for investigation to deputy disciplinary counsel, assistant disciplinary counsel, special assistant disciplinary counsel, or an investigator, any complaint that sets forth reasonable grounds to believe that a person or entity has engaged in, or is engaging in, the unauthorized practice of law;

B. to initiate, by way of a document entitled "Chief Disciplinary Counsel Complaint," a complaint against a person or entity that chief disciplinary counsel has a reasonable ground to believe has engaged in, or is engaging in, the unauthorized practice of law;

C. to prepare and prosecute, or assist in the preparation and prosecution of, civil injunction proceedings as provided in Rules 17B-004 and 17B-005 NMRA;

D. to prepare and prosecute, or assist in the preparation and prosecution of, contempt proceedings as provided in Rules 17B-004 and 17B-007 NMRA;

E. to enter into a consent agreement, as provided in Subparagraph (3) of Paragraph E of Rule 17B-004 NMRA, for the purpose of resolving a complaint against a person or entity that is alleged to have engaged in the unauthorized practice of law;

F. to dismiss in accordance with Paragraph D of Rule 17B-004 NMRA a complaint against a person or entity that has been accused of the unauthorized practice of law;

G. to maintain records of all matters processed and the disposition thereof under the Rules Concerning the Unauthorized Practice of Law;

H. to act as the general administrative officer for the Disciplinary Board under its direction and supervision; and

I. to file with the Disciplinary Board and the Supreme Court, and to publish in the Bar Bulletin, quarterly status reports indicating the receipt, processing, and status of complaints filed under the Rules Concerning the Unauthorized Practice of Law.

[Adopted by Supreme Court Order No. 13-8300-015, effective August 23, 2013.]

## **17B-004. Investigation.**

**A. Commencing an investigation.** Promptly after receiving or initiating a complaint alleging the unauthorized practice of law, chief disciplinary counsel, or chief disciplinary counsel's designee, shall determine whether to proceed with an investigation. In making that determination, disciplinary counsel may make such inquiry regarding the underlying facts as disciplinary counsel deems appropriate.

**B. Notice to respondent.** If disciplinary counsel decides to proceed with an investigation, the respondent shall be notified that the investigation is underway, provided with a copy of the complaint, and asked to file with disciplinary counsel a response to the complaint within fourteen (14) days of the date that disciplinary counsel mails or otherwise serves notice of the complaint to the respondent. Disciplinary counsel may grant a brief extension of time for such a response upon a showing of good cause by the respondent.

**C. Board's subpoena authority.** The Disciplinary Board chair or a hearing officer appointed by the Disciplinary Board under Paragraph D of Rule 17B-005 NMRA may issue subpoenas in the name of the Disciplinary Board or the Supreme Court, upon a showing of good cause, to compel the attendance of respondents and other witnesses or to compel the production of books, papers, documents, or other evidence. Any person subpoenaed to appear and give testimony, or to produce books or records, who refuses to appear and give testimony, or to produce books or records, and any person

having been sworn to testify and who refuses to answer any proper questions, may be held in contempt of the Supreme Court under Rule 17B-007 NMRA. Any person who knowingly obstructs the Disciplinary Board or disciplinary counsel in the performance of their duties may be held in contempt of the Supreme Court under Rule 17B-007 NMRA.

**D. Dismissal of complaints.** If, after investigation of the complaint, chief disciplinary counsel, or chief disciplinary counsel's designee, determines that the complaint should be dismissed, the respondent and the person making the complaint shall be notified in writing of that decision. The dismissal may contain appropriate cautionary language to the respondent. The person making the complaint may request review of the dismissal by a member of the Disciplinary Board. Upon review, the board member's determination is limited to either concurring in the dismissal or ordering additional investigation by disciplinary counsel.

**E. Prosecution of unauthorized practice of law.** If, after conducting an investigation, chief disciplinary counsel, or chief disciplinary counsel's designee, believes that the respondent has engaged in the unauthorized practice of law, chief disciplinary counsel, or chief disciplinary counsel's designee, may do one of the following:

- (1) commence civil injunction proceedings as provided in Rule 17B-005 NMRA;
- (2) commence contempt proceedings as provided in Rule 17B-007 NMRA; or
- (3) enter into a consent agreement with the respondent in which the respondent agrees to do one or more of the following:
  - (a) refrain from the conduct in question;
  - (b) refund any fees collected;
  - (c) make restitution; or
  - (d) pay a fine that may range from one hundred dollars (\$100) to two hundred and fifty dollars (\$250) per incident of unauthorized practice of law.

[Adopted by Supreme Court Order No. 13-8300-015, effective August 23, 2013.]

### **17B-005. Civil injunction proceedings.**

**A. Petition for civil injunction.** If chief disciplinary counsel or, when necessary, chief disciplinary counsel's designee, determines that civil injunction proceedings should be instituted against a respondent, including when seeking approval of a consent agreement entered into under Rule 17B-004(E)(3) NMRA, chief disciplinary counsel or chief disciplinary counsel's designee may commence such proceedings in the name of

the Disciplinary Board by filing a petition in the Supreme Court. The petition shall be in writing and shall set forth the facts and charges in plain language and with sufficient particularity to inform the respondent of the acts that disciplinary counsel contends constitute the unauthorized practice of law. The petition shall specify the requested relief, which may include, without limitation, injunction, refund, restitution, a fine, assessment of costs of the proceeding, or the approval of a consent agreement. A deputy disciplinary counsel or assistant disciplinary counsel shall present a draft of the proposed petition to chief disciplinary counsel prior to filing the petition with the Court. Chief disciplinary counsel or, when necessary, chief disciplinary counsel's designee, shall either approve the filing of the petition or recommend an alternate course of action consistent with these rules.

**B. Referral of petition to the Disciplinary Board.** Upon receipt of a petition filed by disciplinary counsel in accordance with Paragraph A of this rule, the Court may issue a summons directed to the respondent along with an order referring the matter to the Disciplinary Board for further proceedings in accordance with Paragraphs D through K of this rule. Upon receipt of the summons and order, disciplinary counsel shall serve the summons and a copy of the petition upon the respondent in accordance with Rule 17B-009(E) NMRA.

**C. Answer to the petition.** Unless otherwise ordered by the Court in the summons and order referring the matter to the Disciplinary Board, the respondent shall file an answer to the petition with the Disciplinary Board within thirty (30) days after service of the summons and petition on the respondent. If the Court is notified at the time the petition is filed by disciplinary counsel that the respondent has entered into a consent agreement under Rule 17B-004(E)(3) NMRA, no answer need be filed by the respondent unless otherwise ordered by the Court.

**D. Appointment of a hearing officer.** Upon referral of disciplinary counsel's petition to the Disciplinary Board, the Disciplinary Board chair shall appoint a hearing officer to conduct further proceedings in accordance with this rule. Hearing officers shall be licensed to practice law in New Mexico and may include retired judges.

**E. Disposition without hearing.**

(1) *Decision based on the petition.* If the respondent fails to file an answer within the time permitted, disciplinary counsel may move the hearing officer to conclude that the respondent has admitted the facts set forth in the petition. If the hearing officer grants such a motion, the hearing officer shall proceed to decide the case based on the petition and shall report in writing to the Disciplinary Board chair the hearing officer's findings of fact, conclusions of law, and recommended disposition of the case within thirty (30) days of granting the motion.

(2) *Decision based on the pleadings.* If the respondent's answer raises no genuine issue of material fact, any party may move the hearing officer to decide the case based on the pleadings. If the hearing officer grants such a motion, the hearing

officer shall proceed to decide the case and shall report in writing to the Disciplinary Board chair the hearing officer's findings of fact, conclusions of law, and recommended disposition of the case.

(3) *Consent agreement.*

(a) If the respondent has entered into a consent agreement under Rule 17B-004(E)(3) NMRA, the consent agreement shall be submitted to the hearing officer for consideration along with the recommendations of disciplinary counsel. Within thirty (30) days of the agreement being tendered to the hearing officer, the hearing officer shall issue a decision either accepting or rejecting the agreement.

(b) In considering the agreement and reaching a decision, the hearing officer shall take any and all steps that the hearing officer deems are reasonably necessary, including but not limited to admitting and considering stipulated exhibits, reviewing any written admissions or factual stipulations, reviewing memoranda or briefs submitted by the parties, or, in the hearing officer's discretion, holding a hearing to question and otherwise take testimony from the respondent and, if necessary, other witnesses.

(c) If the hearing officer accepts the agreement, the hearing officer shall proceed to report in writing to the Disciplinary Board chair the hearing officer's findings of fact, conclusions of law, and recommended disposition of the case, and the Disciplinary Board shall proceed under Subparagraph (K)(4) of this rule.

(d) If the hearing officer rejects the agreement, the hearing officer shall proceed to schedule and conduct an evidentiary hearing under Paragraphs F through I of this rule, and neither the agreement nor any of the factual stipulations made in connection with the agreement shall be used against the respondent or disciplinary counsel in any further proceedings.

**F. Evidentiary hearing.**

(1) Unless the hearing officer resolves the case without a hearing under Paragraph E of this rule, the hearing officer shall set a date, time, and place for an evidentiary hearing on the pending petition.

(2) The evidentiary hearing shall take place in not less than forty-five (45) and not more than ninety (90) days from the date of service of the summons and petition on the respondent. The hearing officer may extend this deadline only upon a showing of good cause.

(3) The evidentiary hearing shall be held in any county designated by the hearing officer. When designating a place for the hearing, the hearing officer should consider whether the location will be convenient for potential witnesses.

(4) The notice of hearing shall advise the respondent that the respondent is entitled to be represented by counsel at the hearing, to cross-examine witnesses, and to present evidence on the respondent's own behalf. Notice of hearing shall be served in accordance with Rule 1-005 NMRA of the Rules of Civil Procedure for the District Courts.

#### **G. Record of evidentiary hearing.**

(1) "Record," as used in the Rules Concerning the Unauthorized Practice of Law, means the transcript of any evidentiary hearing and all pleadings, exhibits, and other documents filed with the Disciplinary Board during the course of the proceedings.

(2) The hearing officer shall arrange for a certified court reporter to take a record of all evidence received during the course of the hearing. The Disciplinary Board shall pay the expense for the transcript of proceedings, provided that the Court may later assess the expense against the respondent under Rule 17B-006(B) NMRA. The respondent may request a copy of the transcript directly from the court reporter at the respondent's own expense.

#### **H. Evidentiary hearing procedure.**

(1) Hearings shall be adversary in nature and shall be prosecuted by disciplinary counsel who shall bear the burden, by a preponderance of the evidence, of demonstrating that the respondent has engaged in the unauthorized practice of law.

(2) All witnesses shall be sworn.

(3) Disciplinary counsel shall present evidence in support of all allegations in the petition, followed by the respondent's evidence.

(4) The hearing officer shall preside and shall make rulings upon questions of admissibility of evidence and conduct of proceedings.

(5) The hearing officer may ask questions of any witness, including the respondent, at any stage of the proceedings.

(6) Hearings may be adjourned from time to time at the discretion of the hearing officer.

(7) The complaining witness or witnesses, the respondent, and disciplinary counsel may be present throughout the hearing. Other witnesses may be excluded, except when testifying, at the discretion of the hearing officer.

(8) A party may procure the attendance of a witness by requesting that the hearing officer issue a subpoena in the name of the Supreme Court. The Court may

hold a person in contempt of court for failing or refusing, without adequate excuse, to comply with any such subpoena.

(9) The New Mexico Rules of Civil Procedure for the District Courts and the New Mexico Rules of Evidence shall be applicable when not inconsistent with these rules, subject to the fact that the hearing officer may receive and consider any evidence that the hearing officer believes to be cogent and credible in the exercise of sound judicial discretion.

(10) Within a reasonable time after the hearing, as ordered by the hearing officer, both parties shall have the right to submit proposed findings of fact, conclusions of law, and a suggested disposition of the case.

**I. Notice of findings, conclusions, and recommended disposition.**

(1) Within thirty (30) days of receipt of the parties' proposed findings of fact, conclusions of law, and suggested disposition of the case, the hearing officer shall submit to the Disciplinary Board chair the record of the hearing and a written report setting forth the hearing officer's findings of fact, conclusions of law, and recommended final disposition of the case.

(2) If the hearing officer concludes in the report that the respondent has engaged in the unauthorized practice of law, then the hearing officer may recommend that a fine be imposed for each incident of unauthorized practice of law. The minimum fine for each incident shall be not less than two hundred and fifty dollars (\$250) and not more than one thousand dollars (\$1,000).

**J. Review by Disciplinary Board hearing review panel.**

(1) Upon receiving the record of the hearing and the hearing officer's findings of fact, conclusions of law, and recommended disposition, the Disciplinary Board chair shall appoint one or more members of the Board to serve as a hearing review panel to review the matter.

(2) The Disciplinary Board chair shall mail copies of the hearing officer's report to the respondent, counsel for the respondent, chief disciplinary counsel, and prosecuting disciplinary counsel.

(3) The Disciplinary Board chair shall notify the parties of the following:

(a) the date that the hearing officer submitted the evidentiary hearing record and hearing officer's report to the Disciplinary Board chair;

(b) the names of the members of the Disciplinary Board hearing review panel who have been appointed to review the matter;

(c) that the respondent may request a copy of the record of the proceedings directly from the court reporter at the respondent's own expense; and

(d) that the parties have ten (10) days from the date that the Disciplinary Board chair mails or emails notice of the appointment of the Disciplinary Board hearing review panel to request oral argument or permission to submit briefs to the Disciplinary Board hearing review panel. Requests for oral argument or permission to file briefs shall state with specificity the issues to be addressed in the proposed argument or brief and shall be deemed to be filed on the date that they are mailed.

**K. Decision by the Disciplinary Board hearing review panel.**

(1) For those matters involving an evidentiary hearing before a hearing officer, the Disciplinary Board hearing review panel shall consider only evidence in the record of the hearing committee, along with any briefs or oral argument that the Disciplinary Board permits the parties to submit. No additional evidence may be submitted to the hearing review panel. In reaching its decision, the hearing review panel will defer to the hearing officer's factual findings, including matters of credibility, if the factual findings are supported by substantial evidence. The hearing review panel shall review de novo the hearing officer's conclusions of law and recommended disposition.

(2) For those matters involving an evidentiary hearing before a hearing officer, the Disciplinary Board hearing review panel shall render its decision within thirty (30) days following the submission of briefs or oral argument or the receipt of the hearing officer's report, whichever date is later. Upon a showing of good cause, the Disciplinary Board chair may extend the time within which the decision must be rendered.

(3) For those matters involving an evidentiary hearing before a hearing officer, the Disciplinary Board hearing review panel may accept, reject, or modify the recommendations of the hearing officer. Once the panel reaches its decision, the Disciplinary Board or the hearing review panel shall prepare a written report and recommendations that shall be signed by the Disciplinary Board chair, or, at the Disciplinary Board chair's option, the chair of the hearing review panel. The Disciplinary Board chair or hearing review panel chair shall submit the report and recommendations, along with the entire record, to the Supreme Court clerk within thirty (30) days of the hearing review panel's decision. A copy of the report and recommendations shall be served on the respondent at the time they are transmitted to the Supreme Court clerk.

(4) For those matters involving a consent agreement entered into by a respondent under Rule 17B-004(E)(3) NMRA, the Disciplinary Board chair or, at the discretion of the Disciplinary Board chair, a hearing review panel, shall review the agreement, along with the record, and shall accept or reject the agreement within thirty (30) days of receipt of the hearing officer's recommendations.

(a) If the Disciplinary Board chair or the hearing review panel accepts the agreement, the Disciplinary Board chair or hearing review panel chair shall prepare a

report and recommendations accepting the agreement, and shall submit the report and recommendations along with the record to the Supreme Court clerk within thirty (30) days of the Disciplinary Board's or hearing panel's decision. A copy of the report and recommendations shall be served on the respondent at the same time that they are submitted to the Supreme Court clerk.

(b) If the Disciplinary Board or the hearing review panel rejects the agreement, the matter shall be remanded to the hearing officer to conduct an evidentiary hearing under Paragraphs F through I of this rule, and neither the agreement nor any of the factual stipulations made in connection with the agreement shall be used against the respondent or disciplinary counsel in any further proceedings.

[Adopted by Supreme Court Order No. 13-8300-015, effective August 23, 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, required a respondent, in a civil injunction proceeding instituted by the Disciplinary Board, to file an answer to the petition for civil injunction, unless otherwise ordered by the Supreme Court, increased the time within which a respondent must file an answer to the petition for civil injunction, required the hearing officer, when a respondent has failed to file an answer within the time permitted, to issue a written report within thirty days of disciplinary counsel's motion for disposition without a hearing, required evidentiary hearings to take place not less than forty-five days and not more than ninety days from the date of service of the summons and petition on the respondent, and made technical revisions; in Paragraph A, after "a consent agreement entered into under", deleted "Subparagraph (3) of Paragraph E of", after "Rule 17B-004", added "(E)(3)", and after "alternate course of action consistent with these rules.", deleted "Disciplinary counsel shall, at the time of filing the petition, serve a copy upon the respondent in accordance with Paragraph E of Rule 17B-009 NMRA."; in Paragraph B, after "the Court may issue", added "a summons directed to the respondent along with", and added the last sentence; in Paragraph C, deleted "If the Court refers a case to the Disciplinary Board under Paragraph B of this rule, the Court shall order the respondent to file with the Disciplinary Board a written answer admitting or denying the matter stated in the petition.", after "Unless otherwise ordered by the Court", added "in the summons and order referring the matter to the Disciplinary Board", after the next "the", added "respondent shall file an", after "answer", deleted "shall be filed" and added "to the petition with the Disciplinary Board", after "within", deleted "twenty (20)" and added "thirty (30)", after "service of the", deleted "Court's order" and added "summons and petition", after "consent agreement under", deleted "Subparagraph (3) of Paragraph E of", and after "Rule 17B-004", added "(E)(3)"; in Subparagraph (E)(1), after "recommended disposition of the case", added "within thirty (30) days of granting the motion"; in Subparagraph (E)(3)(a), after "consent agreement under", deleted "Subparagraph (3) of Paragraph E of", and after "Rule 17B-004", added "(E)(3)"; in Subparagraph (E)(3)(c), after "Subparagraph", deleted "(4) of Paragraph K" and added

“(K)(4)” in Subparagraph (F)(2), after “from the date of”, deleted “the Disciplinary Board chair’s appointment of the hearing officer” and added “service of the summons and petition on the respondent”; in Subparagraph (G)(2), after “against the respondent under”, deleted “Paragraph B of”, and after “Rule 17B-006”, added “(B)”; in Subparagraph (J)(2), after “for the respondent”, deleted “any complaining witness”; in Subparagraph (J)(3)(d) after “from the date that the”, deleted “hearing officer’s report is mailed” and added “Disciplinary Board chair mails or emails notice of the appointment of the Disciplinary Board hearing review panel”; and in Subparagraph (K)(4), after “a respondent under”, deleted “Subparagraph (3) of Paragraph E of”, and after “Rule 17B-004”, added “(E)(3)”.

## **17B-006. Determination by the Supreme Court.**

**A. Procedure.** Once the Court has received the Disciplinary Board’s report and recommendations, the Court may, in its discretion, order the parties to file briefs on any issue the Court determines appropriate and may order oral argument before the Court. After reviewing the Disciplinary Board’s report and recommendations, the record, and any briefs and oral argument submitted by the parties, the Court may adopt, modify, or reject the Disciplinary Board’s recommendations, in whole or in part, and shall determine as a matter of law whether the respondent has engaged in the unauthorized practice of law, or, in the case of a consent agreement, whether to accept or reject the agreement. In reaching its decision, the Court will defer to the hearing officer’s factual findings, including matters of credibility, if the factual findings are supported by substantial evidence. The Court will review de novo the Disciplinary Board’s conclusions of law and recommended disposition.

**B. Types of relief available.** If the Court finds that the respondent has engaged in the unauthorized practice of law, the Court may enter an order granting any or all of the following relief:

- (1) enjoining the respondent from further conduct found to constitute the unauthorized practice of law;
- (2) imposing on the respondent any fines recommended by the hearing officer and the Disciplinary Board;
- (3) ordering restitution;
- (4) assessing the costs of the proceedings against the respondent; and
- (5) ordering such other relief as the Court deems proper.

**C. Review of consent agreements.** If the Court accepts a consent agreement entered into by the respondent, it shall enter an order adopting the terms of the agreement. If the Court rejects a consent agreement, the Court shall remand the matter to the hearing officer to conduct an evidentiary hearing under Paragraphs F through I of

Rule 17B-005 NMRA, and neither the agreement nor any of the factual stipulations made in connection with the agreement can be used against the respondent or disciplinary counsel in any further proceedings.

**D. Injunctive power.** Nothing in this rule shall be construed to limit the Court's power to issue an injunction at any stage of the proceeding in order to prevent public harm.

**E. Notice of final decision.** The Disciplinary Board will notify the complainant of the final disposition.

[Adopted by Supreme Court Order No. 13-8300-015, effective August 23, 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, provided for notice of the Supreme Court's final disposition and added new paragraph headings; in Paragraph A, added "Procedure."; in Paragraph B, added "Types of relief available."; in Paragraph C, added "Review of consent agreements."; in Paragraph D, added "Injunctive power."; and added new Paragraph E.

### **17B-007. Civil contempt proceedings.**

A. The Supreme Court may use its contempt power to enforce a subpoena issued by the Disciplinary Board, a person's compliance with the Disciplinary Board or disciplinary counsel's investigation into the unauthorized practice of law, a person's compliance with the terms of a consent agreement reached in accordance with Subparagraph (3) of Paragraph E of Rule 17B-004 NMRA, or a Court ordered injunction issued under Rule 17B-006 NMRA.

B. Chief disciplinary counsel, or chief disciplinary counsel's designee, shall bring the following to the attention of the Court in a verified motion for order to show cause:

- (1) a person's failure to obey a Disciplinary Board subpoena;
- (2) a person's obstruction of the Disciplinary Board or disciplinary counsel in the performance of their duties;
- (3) a respondent's failure to comply with any Court order; or
- (4) a respondent's failure to abide by the terms of a consent agreement entered into under Subparagraph (3) of Paragraph E of Rule 17B-004 NMRA.

C. The Court may enter an order directing the respondent to appear before the Court and show good cause why the respondent should not be held in contempt of court

and why the Court should not impose sanctions on the respondent. If factual allegations are in dispute, the Court may remand the matter to the Disciplinary Board for an evidentiary hearing before a hearing officer under Rule 17B-005 NMRA.

D. The Court may impose on a person held in civil contempt of court such fines, restitution, costs, imprisonment, or other terms that the Court deems proper.

[Adopted by Supreme Court Order No. 13-8300-015, effective August 23, 2013.]

## **17B-008. Immunities.**

A. **Immunity from civil suit.** Members of the Disciplinary Board, hearing officers, disciplinary counsel, their respective staff, and any other agents of the Disciplinary Board 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 Disciplinary Board, hearing officers, or disciplinary counsel relating to allegations of unauthorized practice of law.

B. **Witness use 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 these rules, such person or 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 the person's privilege against self-incrimination. Disciplinary counsel shall give the appropriate prosecuting authority notice of any application filed under this paragraph. After considering the application and any objection filed by the appropriate prosecuting authority, the Court may grant the application and may issue a written order under this paragraph if the Court makes the following findings:

(1) production of the testimony, 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 object on the basis of the person's privilege against self-incrimination.

C. **Use of evidence obtained under immunity order precluded.** Where evidence has been obtained under the provisions of this rule through an order requiring a person to testify or to produce a record, document, or other object notwithstanding the person's privilege against self-incrimination, neither that evidence nor any information directly or indirectly derived from that evidence may be used against the person in any criminal case except a prosecution for perjury committed in the course of testifying or in a contempt proceeding for failure to comply with the order.

[Adopted by Supreme Court Order No. 13-8300-015, effective August 23, 2013.]

## **17B-009. General provisions.**

A. **Public proceedings.** All civil injunction proceedings and contempt proceedings filed in the Supreme Court under Rules 17B-005 and 17B-007 NMRA, including proceedings before a hearing officer or a Disciplinary Board hearing review panel, shall be public proceedings unless otherwise ordered by the Court.

B. **Confidentiality.** Except as otherwise provided by these rules or by order of the Court, all proceedings conducted under Rule 17B-004 NMRA prior to the filing of a petition for injunctive relief with the Court shall be held confidential by disciplinary counsel and disciplinary counsel's authorized agent, subject to the need to disclose such information as necessary for disciplinary counsel to conduct the appropriate investigation.

C. **Exceptions to confidentiality.** Disciplinary counsel may disclose the pendency, subject matter, and status of proceedings conducted under the Rules Concerning the Unauthorized Practice of Law to the following:

- (1) an entity authorized to investigate the qualifications of persons for admission to practice law;
- (2) an entity authorized to investigate the qualifications of judicial candidates;
- (3) a lawyer discipline enforcement agency;
- (4) any person or agency requesting such information, if the respondent has waived confidentiality and the request is within the scope of the waiver;
- (5) an agency authorized to investigate violations of the criminal laws, other civil laws prohibiting the unauthorized practice of law, or the consumer protection laws of New Mexico, any other state, or the United States; and
- (6) any person or agency, once a petition for injunctive relief or contempt proceeding has been filed with the Court.

D. **Special counsel; special board.** If an investigation under Rule 17B-004 NMRA relates to a spouse, parent, child, sibling, or other person associated with disciplinary counsel or a Disciplinary Board member, such that the impartiality of disciplinary counsel or the Disciplinary Board may reasonably be called into question, the matter shall proceed in accordance with the Rules Concerning the Unauthorized Practice of Law except for the following.

- (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 Disciplinary Board. Special assistant disciplinary counsel shall proceed in accordance with these rules when investigating and, if appropriate,

prosecuting the complaint. If the special assistant disciplinary counsel prosecutes the matter and a hearing is held before a hearing officer, the normal procedures set forth in these rules shall be used by the Disciplinary Board for selection of the hearing officer. Further, the Disciplinary Board chair, or the vice-chair in the absence of the chair, shall retain jurisdiction to perform all procedural duties pertaining to uncontested matters as set forth in these rules.

(2) If the respondent is a member of the Disciplinary Board or is a spouse, parent, child, or sibling of a Disciplinary Board member, and the matter proceeds to a hearing officer as set forth in Rule 17B-005 NMRA, following the receipt of the hearing officer's findings of fact, conclusions of law, and recommended disposition, the matter shall not be heard by any then-serving Disciplinary Board member or any former member who served on the Disciplinary Board at the time the charges were filed. Instead, the chief justice shall appoint a special board consisting of three members of the bar to perform the Disciplinary Board's functions under Paragraphs J through K of Rule 17B-005 NMRA and to proceed in accordance with these rules.

**E. Service of process.** Disciplinary counsel shall serve on the respondent a petition for injunction filed under Rule 17B-005 NMRA in the same manner that a civil complaint may be served under Rule 1-004 NMRA of the Rules of Civil Procedure for the District Courts. Unless otherwise ordered by the Court, service of all documents after the petition shall be made upon the respondent or the respondent's attorney in accordance with Rule 1-005 NMRA of the Rules of Civil Procedure for the District Courts.

**F. Payment of fines.** In the absence of a Court order to the contrary, any fine imposed against a respondent under these rules shall be paid to the New Mexico Client Protection Fund.

**G. Retention of records.** Records of proceedings pertaining to the unauthorized practice of law shall be maintained as follows.

(1) If the complaint was dismissed, the paper file may be destroyed three (3) years after the dismissal. The complaint, the respondent's response, and any other public records shall be scanned and electronically saved indefinitely.

(2) If a consent agreement was reached with the respondent, the complaint, the response, the petition, the answer, if any, the agreement, all orders, and any other public records shall be maintained in paper form for ten (10) years and, thereafter, scanned and electronically saved indefinitely.

(3) If a petition is filed in the Supreme Court for injunctive relief or contempt proceedings, the petition, the respondent's answer, all orders, and any other public records shall be maintained in paper form for ten (10) years, and, thereafter, scanned and electronically saved indefinitely.

**H. Non-attorney representation in state and local public body administrative matters.** Except as provided in Rule 17-212(C) NMRA, to the extent authorized by a state administrative agency or local public body, a non-attorney may participate in and represent an individual or organization in such state agency's or local public body's administrative matters and hearings in accordance with the rules and procedures of such agency or public body unless prohibited from doing so or otherwise limited by the Supreme Court.

[Adopted by Supreme Court Order No. 13-8300-015, effective August 23, 2013; 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 non-attorneys to represent, with exceptions, individuals or organizations in state and local public body administrative matters; and added new Paragraph H.