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, 76 N.M. 266, 414 P.2d 495 (1966).

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, 78 N.M. 739, 437 P.2d 1008 (1968).

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) formally to 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 chairman 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 court deems necessary; and

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

B. **Chairman.** The chairman of the Disciplinary Board, or the vice chairman in his 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. He shall preside at all meetings of the board. The chairman:

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

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

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

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 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.

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

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 counsel as may be required for efficient performance of the work and all to serve at the pleasure of the board under its supervision. 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.** Disciplinary counsel shall have the power:

(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 assistant disciplinary counsel or to an investigator, all matters involving alleged misconduct by an attorney subject to the jurisdiction of the Supreme Court when called to his 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 shall be reported upon 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:

(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 assistant counsel; 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.** Disciplinary counsel shall have the duty:

(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 assistant counsel;

(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 board 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.** Full time salaried disciplinary counsel or assistant disciplinary counsel shall not engage in the private practice of law. With prior permission of the Disciplinary Board, full-time salaried disciplinary counsel may 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.]

ANNOTATIONS

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 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 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.]

ANNOTATIONS

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

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.

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.

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, 105 N.M. 639, 735 P.2d 1145 (1987).

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, 78 N.M. 739, 437 P.2d 1008 (1968).

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, 77 N.M. 253, 421 P.2d 781 (1966).

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.** 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 address of record, the street address where client files or other materials related to the attorney's practice are located and such other information as the Supreme Court may from time to time direct. 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. 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.

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 good standing 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 but shall continue to file registration 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. The attorney will be relieved from the payment of the fee imposed by Rule 17-203 NMRA, but is required to pay the inactive status fee set by the Board of Bar Commissioners. 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. The 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.

E. **Reinstatement of inactive attorneys.** 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 a copy of such order, pleading or other matter to the attorney at the address 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, magistrates or metropolitan 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.]

ANNOTATIONS

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.

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 2006 amendment, approved by Supreme Court Order 06-8300-32, 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.

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 appointed or elected to serve 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 mailed 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 chairman or vice-chairman 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 lawyer'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.

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 his last payment to the date of his request for reinstatement.

E. **Reinstatement.** Prior to the reinstatement of any attorney pursuant to Rule 17-214 NMRA of these rules, 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 05-8300-15, effective August 26, 2005.]

ANNOTATIONS

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

The 2005 amendment, approved by Supreme Court Order 05-8300-15, effective August 26, 2005, amended Paragraph A to specify the amount of the disciplinary fee previously approved by the Supreme Court.

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. Required records.

A. **Required records.** Every attorney subject to these rules shall maintain complete records of the receipt, deposit, investment and disbursement of all funds, securities and other property received from or on behalf of a client that have at any time come into the attorney's possession, and shall further maintain on a current basis all books and records that will establish the attorney's compliance with Rule 16-115 NMRA of the Rules of Professional Conduct and Rule 24-109 NMRA of the Rules Governing the New Mexico Bar. Accounting records may be maintained in either hard copy or stored on a computer.

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 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. These records 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.

For purpose of this rule, an attorney is deemed to have the necessary "required records" by maintaining:

(1) 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. Deposit slips shall separately identify each item deposited. Trust account disbursement shall be made only by authorized bank transfer or by check payable to a named payee and not to cash. At least one attorney admitted to practice law in this state shall be an authorized signatory on an attorney trust account; but signature authority may be delegated to a nonlawyer, provided, however, such delegation shall not be deemed to relieve the attorney from responsibility for transactions involving the trust account;

(2) a separate ledger or account for each separate trust client, containing the information required by Subparagraph (1) of this paragraph. A continuing balance of each individual client trust ledger shall be maintained. The total of the balances of all individual client trust ledgers must equal 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;

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

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

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

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

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

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

(9) proof of compliance with Rule 24-109 NMRA of the Rules Governing the New Mexico Bar and copies of reports received from the financial institution in compliance with Paragraph B of Rule 24-109 NMRA; and

(10) 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.

B. **Certificate of compliance.** On forms provided by the state bar and approved by the Supreme Court, every attorney subject to these rules shall annually submit to the state bar the attorney's Trust Account Certification/IOLTA Compliance form demonstrating compliance with this rule and Rule 24-109 NMRA of the Rules Governing the New Mexico Bar. 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 shall be submitted to the state bar with the registration statement filed pursuant to Rule 17-202 NMRA. The state bar shall forward the original of each form to the Center for Civic Values. The Center for Civic Values shall maintain each form and shall provide to the Disciplinary Board a copy of any form requested. Whenever the Center for Civic Values shall certify 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.

C. **Applicability of rule.** This rule shall not apply 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 handling legal matters of a corporation or an agency of the federal, state or local government. 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.

[As amended, effective January 1, 1990; July 1, 1991; April 1, 2002; as amended by Supreme Court Order No. 08-8300-26, effective January 1, 2009.]

ANNOTATIONS

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.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-26, 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.

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, 113 N.M. 758, 833 P.2d 235 (1992).

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, 118 N.M. 587, 884 P.2d 478 (1994).

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, 118 N.M. 587, 884 P.2d 478 (1994).

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, 119 N.M. 227, 889 P.2d 835 (1995).

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, 106 N.M. 298, 742 P.2d 510 (1987).

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, 106 N.M. 298, 742 P.2d 510 (1987).

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, 106 N.M. 298, 742 P.2d 510 (1987).

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, 113 N.M. 758, 833 P.2d 235 (1992).

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, 79 N.M. 779, 450 P.2d 188 (1969).

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, 79 N.M. 779, 450 P.2d 188 (1969).

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, 79 N.M. 779, 450 P.2d 188 (1969).

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, 74 N.M. 679, 397 P.2d 475 (1964).

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, 74 N.M. 679, 397 P.2d 475 (1964).

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, 105 N.M. 89, 728 P.2d 840 (1986).

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, 74 N.M. 679, 397 P.2d 475 (1964).

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, 74 N.M. 679, 397 P.2d 475 (1964).

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, 86 N.M. 52, 519 P.2d 288 (1974).

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, 105 N.M. 89, 728 P.2d 840 (1986).

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 Paragraph B of Rule 17-214 NMRA of these rules unless timely objections are filed;

(4) public censure by the Supreme Court;

(5) formal reprimand by the Disciplinary Board;

(6) informal admonition by disciplinary counsel without formal hearing, when acquiesced in by the respondent and approved by a hearing committee reviewing officer or 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 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 (1), (2), (3) and (4) of Paragraph A 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 as the respondent faithfully fulfills all of the conditions thereof; or

(2) if the discipline is imposed pursuant to Subparagraph (5) or (6) of Paragraph A 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's security fund] 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.

D. **Publication of discipline.** Disbarments, definite and indefinite suspensions and public censures shall be published in the New Mexico Reports and the Bar Bulletin and shall be filed in the Supreme Court clerk's office. Formal reprimands by the board shall be published in the Bar Bulletin and shall be filed in the Supreme Court clerk's office.

E. **Effective date.** The effective [day] 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 of these rules.

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, may remand the matter to the Disciplinary Board for an expedited evidentiary hearing pursuant to Paragraph E of Rule 17-314 NMRA. If held in contempt of court, the attorney may be censured, fined, suspended or disbarred.

[As amended, effective May 1, 1986; April 1, 1987; September 1, 1992; January 1, 1995; as amended by Supreme Court Order 05-8300-23, effective December 13, 2005.]

ANNOTATIONS

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.

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.

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

The 2005 amendment, approved by Supreme Court Order 05-8300-23, 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".

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.

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, 104 N.M. 387, 722 P.2d 638 (1986).

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, 104 N.M. 387, 722 P.2d 638 (1986).

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, 100 N.M. 326, 670 P.2d 580 (1983).

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, 109 N.M. 616, 788 P.2d 372 (1990).

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, 110 N.M. 354, 796 P.2d 247 (1990).

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, 112 N.M. 217, 813 P.2d 1015 (1991).

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, 103 N.M. 458, 709 P.2d 180 (1985).

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, 107 N.M. 520, 760 P.2d 1286 (1988).

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, 108 N.M. 481, 775 P.2d 247 (1989).

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, 108 N.M. 650, 777 P.2d 378 (1989).

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, 110 N.M. 352, 796 P.2d 245 (1990).

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, 112 N.M. 75, 811 P.2d 573 (1991).

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, 115 N.M. 734, 858 P.2d 401 (1993).

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, 112 N.M. 205, 813 P.2d 482 (1991).

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

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, 108 N.M. 622, 776 P.2d 551 (1989).

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, 108 N.M. 653, 777 P.2d 381 (1989).

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, 108 N.M. 760, 779 P.2d 546 (1989).

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

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

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, 115 N.M. 737, 858 P.2d 404 (1993).

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, 105 N.M. 641, 735 P.2d 1147 (1987).

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, 105 N.M. 639, 735 P.2d 1145 (1987).

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

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, 113 N.M. 711, 832 P.2d 402 (1992).

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, 106 N.M. 172, 740 P.2d 1156 (1987).

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, 110 N.M 693, 799 P.2d 129 (1990).

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, 112 N.M. 217, 813 P.2d 1015 (1991).

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, 115 N.M. 769, 858 P.2d 857 (1993).

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.** Upon recommendation by the Disciplinary Board, an attorney may be summarily suspended from the practice of law by the Supreme Court:

(1) 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 of the Rules of Professional Conduct;

(2) 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;

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

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

(5) 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:

(a) 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;

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

(c) a criminal complaint, information or indictment has been filed against the attorney.

Prior to suspending an attorney pursuant to this Subparagraph (5), 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 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 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.

B. **Suspension order.** Upon a showing made pursuant to Paragraph A 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.

C. **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 him based upon the conviction.

D. **Reinstatement.** An attorney suspended under the provisions of Paragraph A of this rule shall be reinstated immediately upon the filing of a certificate by the Disciplinary Board demonstrating that:

(1) 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;

(2) if the suspension was imposed because of incompetency or incapacity, the disciplinary board certifies that such incapacity or incompetency no longer exists; or

(3) 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.

E. **Effect of reinstatement.** Reinstatement after a summary suspension 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.

F. **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.

G. **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.

ANNOTATIONS

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, 74 N.M. 679, 397 P.2d 475 (1964)(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, 74 N.M. 679, 397 P.2d 475 (1964)(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, 100 N.M. 326, 670 P.2d 580 (1983).

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, 77 N.M. 461, 423 P.2d 984 (1967) (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, 90 N.M. 226, 561 P.2d 925 (1977).

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, 74 N.M. 679, 397 P.2d 475 (1964)(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, 74 N.M. 679, 397 P.2d 475 (1964)(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, 110 N.M. 180, 793 P.2d 862 (1990).

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. **Determination of incompetency.** 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, the Supreme Court, upon receipt of a certificate and the recommendations from the Disciplinary Board so showing, may enter an order suspending such attorney from the practice of law effective immediately and for an indefinite period until the further order of the Court. The attorney, upon request, shall be afforded an opportunity to be heard on the continuation of the suspension. A copy of such order shall be served upon the incompetent's attorney, guardian and the director of the mental facility in such manner as the Court may direct.

B. **Determination of incapacity.** Whenever the Disciplinary Board shall petition the Supreme Court to determine whether an attorney is incapacitated from continuing the practice of law, the 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 Court shall designate and an expedited hearing before the Disciplinary Board pursuant to the provisions of Paragraph E of Rule 17-314. 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 suspending the attorney on the ground of such disability for an indefinite period and until the further order of the Court, and any pending disciplinary proceeding against the attorney shall be held in abeyance.

The 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 if the respondent is without adequate representation.

C. **Inability to defend self during disciplinary proceeding.** If, during the course of a disciplinary proceeding, the respondent contends, or it becomes apparent to the hearing committee or the Disciplinary Board, that the respondent is incapacitated to an

extent which makes it impossible for the respondent to adequately present a defense, the Supreme Court thereupon may enter an order immediately suspending the respondent from continuing to practice law 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.

If, in the course of a proceeding under this rule, or in a disciplinary proceeding, the Supreme Court determines that the respondent 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.

D. **Reinstatement.** Except for a summary suspension, any attorney suspended under the provisions of this rule shall be entitled to apply for reinstatement a year after the effective date of the suspension order and at the end of each year thereafter, or at such shorter intervals as the Supreme Court may direct in the order of suspension or any modification thereof in accordance with Rule 17-214.

E. **Burden of proof.** In a proceeding seeking an order of suspension under this rule, the burden of proof by a preponderance of the evidence shall rest with the Disciplinary Board.

[As amended, effective September 1, 1994; January 1, 1995.]

ANNOTATIONS

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

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.

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.

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 admitting to the truth of the charges against him, or if no charges have been served by the Disciplinary Board, admitting to the truth of the allegations filed against him and stating that he consents that the Supreme Court may require reasonable conditions for protection of the public, including making a permanent record of the fact of his 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 counsel may submit such matter of fact or argument as he 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 shall be matters of public record.

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. 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 condition reinstatement upon successful completion of the Multistate Professional Responsibility Examination.

ANNOTATIONS

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 v. Muldavin, 71 N.M. 230, 377 P.2d 526 (1963) (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, 113 N.M. 56, 823 P.2d 298 (1991).

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, 102 N.M. 524, 697 P.2d 943 (1985).

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. **Order of the Supreme Court.** Upon receipt of a certificate that an attorney admitted to practice in this state has been disciplined in another jurisdiction, the Supreme Court may enter an order imposing the identical discipline or, in its discretion, may suspend the attorney pending investigation and the imposition of final discipline in accordance with these rules.

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

C. **Modification of discipline.** The Disciplinary Board or the respondent-attorney may move the Supreme Court, within thirty (30) days after the entry of an order imposing reciprocal discipline pursuant to the provisions of Paragraph A of this rule, 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.

D. **Suspension.** In the event the Supreme Court suspends the attorney disciplined in another jurisdiction pending imposition of final discipline, pursuant to the provisions of Paragraph A 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.

E. **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.

ANNOTATIONS

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

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, 116 N.M. 700, 866 P.2d 1167 (1994).

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, 108 N.M. 666, 777 P.2d 905 (1989).

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, 113 N.M. 711, 832 P.2d 402 (1992).

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.** An attorney against whom formal charges have been made may tender to disciplinary counsel a conditional agreement admitting to any of the charges 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.

B. **Acceptance.** The tendered agreement shall be submitted to the hearing committee for consideration along with the recommendations of disciplinary counsel. If the hearing committee rejects the agreement, it shall proceed to schedule and conduct a hearing pursuant to Rule 17-313 NMRA. If the committee accepts the agreement, it shall forward it to the board along with an explanation of its reasons for recommending the acceptance. The agreement may be approved or rejected by the board. The committee or board, or both, may convene a hearing to consider the tendered agreement. If the board accepts an admission:

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

(a) if the discipline agreed to by the attorney includes resignation, disbarment, suspension, probation or transfer to disability inactive status or public censure by the Supreme Court, the agreement shall be filed with the Supreme Court for entry of an order imposing the discipline provided for in the agreement;

(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 was conditioned upon a particular sanction and the agreement is rejected by the hearing committee, board or Supreme Court, the admission shall be withdrawn and cannot be used against the attorney 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 [he]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 or transfer to disability status or public censure by the Supreme Court, the chair of the board shall file the agreement with the Supreme Court. 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 06-8300-32, effective January 15, 2007.]

ANNOTATIONS

The 2006 amendment, approved by Supreme Court Order 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 or has been disbarred or suspended shall promptly notify by registered or certified mail, return receipt requested, all clients being represented by him in pending matters, other than litigated or administrative matters or proceedings pending in any court or agency, of his resignation, disbarment or suspension and his consequent inability to act as an attorney after the effective date of his resignation, disbarment or suspension, and shall inform the clients to seek legal advice elsewhere. An attorney who has resigned, been disbarred or suspended from the practice of law may not recommend to his clients the name of any other lawyer to represent them.

B. **Notification in litigated matters.** An attorney who has resigned pursuant to Rule 17-209 or has been disbarred or suspended shall promptly give notice of disbarment, suspension or resignation in a form prescribed 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.

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 his 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 or has been disbarred or suspended pursuant to these rules, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. 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 which 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) he has fully complied with the provisions of the order and with this rule; and

(2) he 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 Paragraph A of this rule.

Such affidavit shall also set forth the residence or other address of the attorney where communications may thereafter be directed to him. The attorney shall continue to file a registration statement in accordance with Rule 17-202, listing his residence or other address where communications may thereafter be directed to him 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.

E. **Required records.** An attorney who has resigned pursuant to Rule 17-209 or has been disbarred or suspended shall keep and maintain records of the various steps taken by him under this rule so that upon any subsequent proceeding instituted by or against him, 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 provision of this rule may be held in contempt of the Supreme Court.

ANNOTATIONS

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, 119 N.M. 232, 889 P.2d 840 (1995).

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, 120 N.M. 495, 903 P.2d 237 (1995).

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, 113 N.M. 711, 832 P.2d 402 (1992).

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, may appoint an attorney or attorneys 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 which 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 which appointed the attorney to make such inventory.

[As amended, effective August 1, 1988; as amended by Supreme Court Order 06-8300-32, effective January 15, 2007.]

ANNOTATIONS

The 2006 amendment, approved by Supreme Court Order 06-8300-32, 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 attorneys.** A person who has been disbarred may not apply for reinstatement, except upon prior approval of the Supreme Court. Unless otherwise stated in the order of disbarment, a motion for permission to apply for reinstatement may not be filed for a period of at least five (5) years from the effective date of the disbarment. A motion for permission to apply for reinstatement shall have attached thereto a copy of the order of disbarment and an affidavit of compliance. The affidavit of compliance shall set out every condition for reinstatement and state, separately for each such condition, what the disbarred attorney did to comply with that condition. If the motion for reinstatement is denied by the Supreme Court, no further motion for reinstatement may be filed prior to the expiration of a twelve- (12) month period commencing the date that the motion is denied by the Supreme Court, unless a shorter interval is directed in the order denying the motion. If the Supreme Court enters an order permitting the disbarred attorney to file an application for reinstatement, the application shall be referred to the Disciplinary Board, pursuant to Paragraph E of this rule.

B. **Suspended attorneys.**

(1) An attorney who has been suspended for a specific period of time 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 an indefinite period of time, at any time after complying with the conditions of reinstatement, may file with the clerk of the Supreme Court a petition for

reinstatement attaching thereto 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 referred to the Disciplinary Board for a hearing and recommendations pursuant to 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. **Suspension due to incompetency or incapacity.** 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 disability 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 motion for permission to apply for reinstatement pursuant to Paragraph A of this rule or a petition for reinstatement pursuant to Subparagraph (2) of Paragraph B 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. 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 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 indefinitely suspended on account of misconduct, incompetency or incapacity, or by attorneys who have been disbarred or who have resigned while under investigation by the Disciplinary Board pursuant to Rule 17-209 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; 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 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 Court may direct, after which the 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 Multi-State Professional Responsibility Examination given by the Board of Bar Examiners prior to reinstatement.

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**. Upon completion of the probationary period, an attorney who has been put on formal probationary status pursuant to Rule 17-206 NMRA must file a petition for reinstatement, attaching thereto an affidavit of compliance with the terms and conditions of probation, in order to be terminated from probationary status. Affidavits of compliance with probation and any objection to reinstatement by disciplinary counsel shall be reviewed by a panel of the Disciplinary Board. Oral argument will be held upon request of either party or at the request of the board panel. If argument is held, it shall be conducted in accordance with procedures set forth in Rule 17-314 NMRA. The board panel may also refer the petition to a hearing committee for further proceedings pursuant to Paragraph E of this rule. After reviewing and investigating a petition for reinstatement, the Disciplinary Board may recommend:

(1) full reinstatement;

(2) extension of the period of probation for a period not to exceed two (2) years; or

(3) imposition of other discipline.

The recommendation of the Disciplinary Board will be referred to the Supreme Court for final action pursuant to Rule 17-316 NMRA.

I. **Waiver of psychotherapist-patient privilege.** The filing of an application for reinstatement by an attorney suspended for incompetency or incapacity 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 status, and the attorney shall furnish to the Supreme Court written consent for each psychiatrist, psychologist, physician, hospital or other institution to divulge such information and records as requested by court-appointed medical experts.

[As amended, effective May 1, 1986; September 1, 1992; as amended by Supreme Court Order 06-8300-32, effective January 15, 2007.]

ANNOTATIONS

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

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.

The 2006 amendment, approved by Supreme Court Order 06-8300-32, 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.

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, 110 N.M. 180, 793 P.2d 862 (1990).

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, 112 N.M. 75, 811 P.2d 573 (1991).

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, 112 N.M. 132, 812 P.2d 786 (1991).

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, 115 N.M. 687, 858 P.2d 63 (1993).

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; 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.** 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.

C. **Service.** Except as otherwise provided in these rules, the specification of changes, 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 him or by mailing it to him at the address listed on the most recent registration statement filed under Rule 17-202. Delivering of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his 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 his 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.

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 him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

ANNOTATIONS

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, 107 N.M. 171, 754 P.2d 842 (1988).

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, 112 N.M. 109, 812 P.2d 358 (1991).

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, 112 N.M. 109, 812 P.2d 358 (1991).

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.

Except in cases involving theft or misappropriation, conviction of a crime, or a knowing act of concealment, no complaint against a person subject to these rules shall be considered by the board unless a written complaint is filed with or initiated by chief disciplinary counsel in accordance with these rules within four (4) years from the time the complainant knew or should have known the facts upon which the complaint is filed.

[As amended, effective February 1, 1994.]

ANNOTATIONS

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.

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.

[As amended, effective September 1, 1992; February 14, 1995; August 31, 2004; December 13, 2005; as amended by Supreme Court Order 07-8300-10, effective April 30, 2007.]

ANNOTATIONS

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

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.

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 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 2005 amendment, approved by Supreme Court Order 05-8300-23, effective December 13, 2005 amended Subparagraph (3) of Paragraph B to change "Client Security Fund Committee" to "Client Protection Commission".

The 2007 amendments, approved by Supreme Court Order 07-8300-10, 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.

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, 88 N.M. 588, 544 P.2d 1153 (1975).

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) 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 which has been authorized pursuant to Rule 17-311 NMRA and which, 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.** 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, or an attorney admitted to practice in this state when the request is by a respondent in a proceeding in another jurisdiction. 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.]

ANNOTATIONS

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

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.

The 2006 amendment, approved by Supreme Court Order 06-8300-01, 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.

17-307. Investigation of complaints.

A. **Initiation.** Chief disciplinary counsel, deputy disciplinary counsel or assistant counsel designated by the chair of the Disciplinary Board shall initiate all investigations, whether upon complaint or otherwise. Investigations shall be conducted by disciplinary counsel staff attorneys or referred to an appropriate assistant counsel or commissioned investigator for report and recommendations. 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, 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;

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

E. **Review prior to filing formal charges.** Any deputy disciplinary counsel or assistant counsel designated by the chair of the Disciplinary Board shall present a draft of the proposed specification of charges to chief disciplinary counsel prior to filing the specification of charges. Chief disciplinary counsel 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 counsel; special board.** If an 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) the board shall appoint a special counsel, who shall proceed in accordance with Paragraph B of Rule 17-105 NMRA; and

(2) if the respondent is a member of the board or is a spouse, parent, child or sibling of a board member, the chief justice shall appoint a special board consisting of three members of the bar to hear the case and to report its findings, conclusions and recommendations directly to the Supreme Court.

[As amended, effective October 25, 1996; November 30, 2004; as amended by Supreme Court Order 06-8300-32, effective January 15, 2007.]

ANNOTATIONS

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.

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 2006 amendment, approved by Supreme Court Order 06-8300-32, 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.

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 Article 2 of these rules, chief disciplinary counsel 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.

[As amended, effective January 1, 1987; September 1, 1990.]

ANNOTATIONS

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.

Specification of charges shall be signed by chief disciplinary counsel or by the full-time deputy 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 06-8300-32, effective January 15, 2007.]

ANNOTATIONS

The 2006 amendment, approved by Supreme Court Order 06-8300-32, 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 06-8300-32, effective January 15, 2007.]

ANNOTATIONS

The 2006 amendment, approved by Supreme Court Order 06-8300-32, 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, 116 N.M. 700, 866 P.2d 1167 (1994); 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 06-8300-32, effective January 15, 2007.]

ANNOTATIONS

The 2006 amendment, approved by Supreme Court Order 06-8300-32, 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 thirty (30) days after the expiration of time for filing an answer, 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 twenty (120) days from the date of the expiration of time for filing an answer. Upon a showing of good cause, the chair of the Disciplinary Board may extend the time for the commencement of the hearing.

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 Paragraph B of Rule 17-106 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 ten (10) days after the conclusion of the hearing 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.

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) a 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 08-8300-01, effective January 16, 2008.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order 08-8300-01, 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.

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 panel.

E. **Proceedings on remand.** If the Supreme Court remands a matter to the Disciplinary Board for evidentiary proceedings pursuant to Paragraph G of Rule 17-206 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 08-8300-01, effective January 16, 2008.]

ANNOTATIONS

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.

The 1995 amendment, effective January 1, 1995, added Paragraph E.

The 2008 amendment, approved by Supreme Court Order 08-8300-01, effective January 16, 2008, rewrote Paragraph B.

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, 112 N.M. 132, 812 P.2d 786 (1991).

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. 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. **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;

C. **Suspension; disbarment; public censure; probation.** 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, 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 07-8300-15, effective June 13, 2007.]

ANNOTATIONS

The 2007 amendment, approved by Supreme Court Order 07-8300-15, 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, 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 or to impose or terminate probation, 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 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 or disbarment, 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 or probation, the Disciplinary Board may publish the public 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 06-8300-32, effective January 15, 2007.]

ANNOTATIONS

The 2001 amendment, effective April 12, 2001, added Paragraph A(3).

The 2006 amendment, approved by Supreme Court Order 06-8300-32, 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".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A C.J.S. Attorney and Client, §§ 109 to 115.

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, 112 N.M. 17, 810 P.2d 1237 (1991).

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
13	17-208
14	17-209

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 (Bd.)	17-312
14 (Bd.)	17-313

15	17-210
16	17-211
17	17-212
18	17-213
19	17-214

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.)