UNANNOTATED

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.]

17-102. Powers and duties.

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

(1) pursuant to the procedures herein provided, to consider and investigate the conduct of any attorney within the jurisdiction of the Supreme Court, and may initiate

an investigation on its own motion or may undertake the same upon complaint by any person;

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

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

(4) to conduct an annual meeting at a time and place to be determined by the Chief Justice and chair of the Disciplinary Board. The meeting will be sponsored by the Supreme Court, and those invited to attend shall be the members of the Disciplinary Board, members of the Supreme Court, and all systems participants including hearing committee members and disciplinary counsel. The purpose of this meeting will be to review rules, discuss problems, establish performance criteria, and discuss any other matters the board or Supreme Court deems necessary; and

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

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

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

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

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

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

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

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

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

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.

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.]

17-105. Disciplinary counsel.

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

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

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

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

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

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

(b) letter of caution;

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

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

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

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

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

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

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

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

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

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

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

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

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

17-106. Salaries and expenses; assessments.

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

B. **Assessments.** The Supreme Court, or in the case of formal reprimands and informal admonitions the Disciplinary Board, has the power and authority to assess against the respondent-attorney who has been determined to have committed an act or omission which violates the Rules of Professional Conduct or these rules, all costs incurred in a disciplinary proceeding, including, but not limited to, the cost of

depositions, exhibits, transcripts, witnesses and the expenses of hearing committee members and members of the Disciplinary Board who participate in the proceedings. The Supreme Court, or in the case of formal reprimands and informal admonitions the Disciplinary Board, may also assess a respondent-attorney for the expenses and costs of an investigation which were incurred in the handling of a disciplinary proceeding against the attorney. The order imposing discipline will include a statement of any costs assessed, a date by which said costs will be paid to the Disciplinary Board and the rate of interest that will accrue thereafter. The order of discipline assessing costs will constitute an enforceable judgment as defined by law, and the Disciplinary Board may enforce any unpaid judgment pursuant to the remedies available at law to any judgment creditor.

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

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.]

17-202. Registration of attorneys; failure to register.

An attorney who fails to file the registration statement, or supplement thereto, in accordance with the requirements of Rule 24-102.1 NMRA, may be subject to discipline under these rules or administrative suspension under Rule 24-102 NMRA or Rule 24-102.2 NMRA.

[As amended, effective January 1, 1987; January 1, 1997; November 30, 2004; as amended by Supreme Court Order No. 06-8300-32, effective January 15, 2007; as amended by Supreme Court Order No. 16-8300-035, effective for status changes on or after December 31, 2016; as amended by Supreme Court Order No. 17-8300-004, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. 17-8300-022, effective for status changes on or after December 31, 2017; as amended by Supreme Court Order No. 21-8300-030, effective for all cases filed or pending on or after December 31, 2021.]

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

A. **Annual disciplinary fee assessment.** Every attorney required to register in accordance with Rule 24-102.1 NMRA, other than attorneys who serve or retired as a justice, judge, or magistrate and retired, suspended, or disbarred attorneys, shall, prior to January of each year, pay to the Disciplinary Board an annual disciplinary fee in the amount of one hundred fifty dollars ($150.00). The annual disciplinary fee assessment shall be submitted to the state bar at the time the registration statement required under Rule 24-102.1 NMRA is submitted. Annual disciplinary fee assessments collected by the state bar shall be deposited in an account in a financial institution in the name of the Disciplinary Board. The funds deposited in the Disciplinary Board account may be expended to defray the costs of processing attorney registration, disciplinary enforcement, and for such other purposes as the Disciplinary Board shall, with the approval of the Court, from time to time determine upon the signature of the chair or vice-chair of the Board. The Disciplinary Board shall make a monthly financial report to the Supreme Court of all recei pts and disbursements.

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

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

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

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

[As amended, effective January 1, 1988; January 1, 1999; as amended by Supreme Court Order No. 05-8300-015, effective August 26, 2005; as amended by Supreme Court Order No. 15-8300-023, effective December 31, 2015; as amended by Supreme Court Order No. 18-8300-009, effective December 31, 2018; as amended by Supreme Court Order No. 21-8300-030, effective for all cases filed or pending on or after December 31, 2021.]

17-204. Trust accounting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. **Trust account overdraft notification.**

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

(a) “financial institution” means any financial institution authorized by federal or state law to do business in New Mexico, the deposits of which are insured by an agency or instrumentality of the federal government.

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

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

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

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

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

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

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

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

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

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

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

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

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

with this rule, including compliance with Paragraph C of this rule, and Rule 24-109 NMRA, or claiming an exemption from this rule under Paragraph E of this rule. Such form shall include the financial institution name, the account name, and the account number of any and all accounts in which client funds are held, and the date, title, and location of the last course taken by the attorney as required by Paragraph C of this rule, and shall be submitted to the state bar with the registration statement filed under Rule 24-102.1 NMRA. The state bar shall retain the original of each form and shall provide to the Disciplinary Board a copy of any form requested. When the state bar certifies to the Supreme Court that any member of the state bar has failed or refused to comply with the provisions of this paragraph, the clerk of the Supreme Court shall issue a citation to such member requiring the member to show cause before the Court, within fifteen (15) days after service of such citation, why the member should not be suspended from the right to practice in the courts of this state. Service of the citation may be by personal service or by first class mail postage prepaid. The member's compliance with the provisions of this paragraph on or before the return day of such citation shall be deemed sufficient showing of cause and shall serve to discharge the citation.

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

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

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

[As amended, effective January 1, 1990; July 1, 1991; April 1, 2002; as amended by Supreme Court Order No. 08-8300-026, effective January 1, 2009; as amended by Supreme Court Order No. 09-8300-019, effective January 1, 2010; as amended by Supreme Court Order No. 14-8300-026, effective January 1, 2015; as amended by Supreme Court Order No. 16-8300-026, effective December 31, 2016; as amended by Supreme Court Order No. 21-8300-030, effective for all cases filed or pending on or after December 31, 2021.]

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

The overdraft notification provisions in this rule are intended to help prevent misappropriation by providing a method for early warning of improprieties in the

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

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

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.

17-206. Types of discipline.

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

(1) disbarment by the Supreme Court;

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

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

(4) public censure by the Supreme Court;

(5) formal reprimand by the Disciplinary Board;

(6) informal admonition

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) fee arbitration;

(c) law office management assistance or monitoring;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The agreement, along with the hearing committee reviewing officer’s approval of the proposed diversion and any underlying investigation, shall then be tendered to the chair of the Disciplinary Board, or the chair's designee, for review and approval. The chair, or the chair’s designee, may approve or reject the agreement or may recommend and approve a modified agreement if approved by disciplinary counsel and the respondent-attorney. If the chair, or the chair’s designee, rejects the agreement or proposes a modified agreement that is not approved by both disciplinary counsel and the respondent-attorney, the agreement, and any and all factual stipulations or admissions or legal conclusions made in connection with the agreement shall be withdrawn and cannot be used against the respondent-attorney or disciplinary counsel in any subsequent disciplinary proceedings or in any other judicial proceeding. Thereafter, the

disciplinary matter shall proceed in accordance with the Rules Governing Discipline as if no diversion program was proposed or accepted.

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

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

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

(8) *Breach of diversion agreement*. If disciplinary counsel has reason to believe that the respondent-attorney has breached the diversion agreement, disciplinary counsel shall notify the respondent-attorney of the apparent breach and the respondent-attorney will have the opportunity to respond. If disciplinary counsel is not satisfied with the respondent-attorney's response, the matter shall be referred to a three (3)-member panel of the Disciplinary Board for hearing. Disciplinary counsel will have the burden by a preponderance of the evidence to establish the breach itself and the materiality of the breach, and the respondent-attorney will have the burden by a preponderance of the evidence to establish justification for the breach. The hearing shall proceed before the Disciplinary Board panel in the same manner as formal hearings before a hearing committee under Rule 17-213(D) NMRA, subject to the fact that the matter remains confidential under subparagraph (10) of this paragraph. Within fourteen (14) days of the court reporter notifying the parties that the transcript of hearing is complete, disciplinary counsel and the respondent-attorney shall submit to the Disciplinary Board panel proposed written findings of fact, conclusion of law, and a recommendation. Within thirty (30) days of receipt of the parties' submissions, the Disciplinary Board panel will enter its findings of fact, conclusions of law, and determination. If the Disciplinary Board panel determines that the respondent-attorney has materially breached the diversion

agreement, the diversion agreement shall be terminated by the Disciplinary Board, the complaint or complaints that led to the diversion agreement shall be reclassified as "open," and the matter will proceed in accordance with the Rules Governing Discipline. If the Disciplinary Board determines that the respondent-attorney breached the diversion agreement, but the breach was immaterial, the Disciplinary Board may, to the extent it deems necessary, modify the original diversion agreement to obviate any future immaterial breaches or it may simply order that the original diversion agreement remain in full force and effect. If the Disciplinary Board determines that the respondent-attorney did not breach the diversion agreement, the original diversion agreement shall remain in full force and effect and the matter will proceed under the terms of the original diversion agreement.

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

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

[As amended, effective May 1, 1986, April 1, 1987; September 1, 1992; January 1, 1995; as amended by Supreme Court Order No. 05-8300-023, effective December 13, 2005; by Supreme Court Order No. 12-8300-007, effective March 5, 2012; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015; as amended by Supreme Court Order No. 18-8300-009, effective December 31, 2018.]

17-207. Summary suspension.

A. **Summary suspension.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) *Effect of reinstatement.* Reinstatement after a summary suspension ordered under the provisions of Subparagraph (A)(1) of this rule shall not terminate any formal disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the hearing committee and the Disciplinary Board as provided in these rules.

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

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

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

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

(a) failing to respond to requests for information;

(b) failing to respond to requests for investigation;

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

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

(e) failing to produce information or records requested by disciplinary counsel absent a good-faith objection, then disciplinary counsel may file a petition for suspension of the attorney’s license to practice law. Proceedings commenced against an attorney under the provisions of this paragraph are administrative suspension proceedings. Suspension of an attorney’s license to practice law under the provisions of

this paragraph is not a form of discipline and shall not necessarily bar disciplinary action.

(2) *Petition for suspension.* Disciplinary counsel may file a petition for suspension with the Supreme Court alleging that the attorney has not responded to requests for information, has not responded to the request for investigation, has not appeared for a scheduled deposition or hearing, has not timely answered the specification of charges, or has not produced records or documents requested by disciplinary counsel and has not interposed a good-faith objection to producing the records or documents. The petition shall be supported by an affidavit setting forth sufficient facts to demonstrate the efforts undertaken by disciplinary counsel to obtain the attorney's cooperation and compliance. A copy of the petition shall be served on the respondent-attorney pursuant to Rule 17-301(C) NMRA.

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

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

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

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

17-208. Incompetency or incapacity.

A. **Disability inactive status.**

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

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

B. **Transfer to disability inactive status upon determination of incompetency, disability, or incapacity.** When an attorney has been judicially declared incompetent or has been involuntarily committed for treatment for a mental or emotional condition, after appropriate judicial proceedings, or has been found not guilty of a crime by reason of insanity after appropriate judicial proceedings, the Supreme Court, upon receipt of a certificate and the recommendations from the Disciplinary Board so showing, may enter an order transferring such attorney to disability inactive status effective immediately and for an indefinite period until the further order of the Supreme Court. The attorney, upon request, shall be afforded an opportunity to be heard on the continuation of the disability inactive status. A copy of such order shall be served upon the attorney, the attorney's guardian, and, if applicable, the director of the mental facility in such manner as the Supreme Court may direct.

C. **Procedure when a determination of incapacity is sought.** Except for those situations set forth in Paragraph B of this rule, whenever the Disciplinary Board believes that an attorney is unable to fulfill professional responsibilities competently because of physical, mental, or emotional infirmity, impairment, incapacity, or illness, the Disciplinary Board may, in addition to or instead of proceeding under Rule 17-207 NMRA, petition the Supreme Court to determine whether the attorney is incapacitated from continuing the practice of law and whether the attorney should be transferred to disability inactive status. Upon receipt of such a petition, the Supreme Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Supreme Court may designate and an expedited hearing before the Disciplinary Board under the provisions of Paragraph E of Rule 17-314 NMRA. If, upon due consideration of the matter, the Supreme Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order placing the attorney on disability inactive status on the ground of such disability or incapacity for an indefinite

period and until the further order of the Supreme Court. Pending disciplinary proceedings against the attorney may be held in abeyance. The Supreme Court shall provide for such notice to the respondent-attorney of proceedings in the matter as is consistent with fundamental fairness and due process and may appoint an attorney to represent the respondent-attorney if the respondent-attorney is without adequate representation.

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

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

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

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

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

17-209. Resignation by attorneys under investigation.

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

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

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

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

E. **Reinstatement.** Any attorney whose resignation under this rule is accepted may not apply for readmission or reinstatement to the bar of this state, except by leave of the Supreme Court which the Supreme Court may grant or deny in its sole discretion. If the Supreme Court allows an application for readmission to be filed, the matter shall be referred to the Disciplinary Board for review in accordance with Rule 17-214. The Supreme Court may in the order accepting a resignation provide that an attorney may not apply for readmission or reinstatement to the bar of this state, or it may set a minimum time period that must pass before an attorney may apply for readmission or reinstatement. If the Supreme Court does not prohibit an attorney from applying for readmission or reinstatement and does not otherwise set a minimum time period before such an application may be filed, any attorney who resigns may not apply for readmission or reinstatement any sooner than three (3) years after the attorney’s resignation is effective. If the Supreme Court allows an attorney to apply for readmission or reinstatement, the Court may condition reinstatement upon: (1) the successful completion of the New Mexico Bar Examination prior to reinstatement; (2) a character and fitness evaluation by the Board of Bar Examiners, with the applicant paying whatever fee the Board of Bar Examiners determines is appropriate for such evaluation, and directing that any recommendations based on such evaluation shall be made a part of the record during reinstatement proceedings; (3) a medical, mental health and/or substance abuse evaluation by an evaluator approved by the Court and paid for by the applicant to determine the applicant’s fitness to return to the practice of law; (4) the successful completion of all continuing education credit requirements applicable to active, licensed New Mexico attorneys for each compliance year during the applicant’s absence from practice; (5) taking and attaining at least an 85 scaled score on the Multi-State Professional Responsibility Examination given by the Board of Bar Examiners; and (6) such other conditions as the Court may require.

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

17-210. Reciprocal discipline.

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

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

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

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

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

D. **Modification of discipline.** At the time the motion for discipline is filed or in response to the motion, the Disciplinary Board or the respondent-attorney may move the Supreme Court for an order modifying the reciprocal discipline upon the ground that upon the face of the record upon which the discipline is predicated, it clearly appears

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

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

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

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

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

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

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

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

17-211. Discipline by consent; stipulated facts.

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

B. **Acceptance.** The tendered agreement shall be submitted to the hearing committee for consideration along with the recommendations of disciplinary counsel.

Within thirty (30) days of the agreement being tendered to the hearing committee, the hearing committee shall issue a decision either accepting or rejecting the agreement. In considering the agreement and reaching its decision, the hearing committee shall take any and all steps that it deems are reasonably necessary to consider the factual basis for the admission of, or agreement not to contest, any or all of the allegations or charges, including the factual basis for the finding of, or agreement that, the respondent-attorney has violated the New Mexico Rules of Professional Conduct and that the agreed upon discipline is appropriate in light of the stipulated misconduct and the previous discipline imposed in reasonably similar matters. The steps may include, but are not limited to, admitting and considering stipulated exhibits, reviewing any written admissions or stipulations of fact offered to the committee, reviewing memoranda or briefs submitted by either the respondent-attorney or disciplinary counsel, or, in the committee's discretion, setting a hearing to question and otherwise take testimony from the respondent-attorney and, if necessary, other witnesses, about the agreement. If the hearing committee rejects the agreement, it shall proceed to schedule and conduct a hearing under Rule 17-313 NMRA. If the hearing committee accepts the agreement, it shall forward it to the board along with an explanation of its reasons for recommending the acceptance and the record made by the hearing committee in considering the agreement. The agreement may be approved or rejected by the board. The board may convene a hearing to consider the tendered agreement and may seek the supplementation of the record with any additional evidence it deems necessary to consider the agreement. If the board accepts an agreement

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

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

(i) if the discipline agreed to by the attorney provides for public censure by the Supreme Court, the board shall also file a proposed public censure with the Supreme Court in accordance with Rule 17-317 NMRA;

(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 under Rule 17-313 NMRA to determine whether the facts constitute misconduct and, if they do, the appropriate form of discipline, if any, to be imposed. The committee shall then file its findings, conclusions, and recommendations with the board in accordance with Rule 17-313 NMRA.

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

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

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

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

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

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

E. **Filing of agreement.** If the agreement is accepted by the board and if the agreement provides for resignation, disbarment, suspension, probation, transfer to disability status, or public censure by the Supreme Court, the chair of the board shall file the agreement with the Supreme Court along with the record of the proceedings. If the discipline agreed to by the attorney provides for public censure by the Supreme Court, the board shall also file a proposed public censure in accordance with Rule 17-317 NMRA. On 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 on order of the Supreme Court. An order imposing discipline under an agreement shall not be sealed.

[As amended, effective January 1, 1986 and April 1, 1988; as amended by Supreme Court Order No. 06-8300-032, effective January 15, 2007; as amended by Supreme Court Order No. 13-8300-045, effective December 31, 2013; as amended by Supreme Court Order No. S-1-RCR-2024-00108, effective December 31, 2024.]

17-212. Resigned, disbarred or suspended attorneys.

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

B. **Notification in litigated matters.** An attorney who has resigned under Rule 17-209 NMRA or has been disbarred or suspended under the Rules Governing Discipline shall promptly give notice of disbarment, suspension or resignation in a form prescribed or approved by the Disciplinary Board by registered or certified mail, return receipt requested: to each of his clients who is involved in litigated matters or administrative proceedings; to the attorney for each adverse party in such matter or proceeding or, if an adverse party is proceeding pro se, to the pro se adverse party; and to the court or administrative agency in which the matter is pending. The notice of disbarment, suspension or resignation shall set forth the effective date of the attorney's resignation, disbarment or suspension. The notice to be given to the client shall inform the client that he should seek the legal advice of another attorney or attorneys in his place. If accepted by the Supreme Court, an attorney who enters into a conditional agreement under Rule 17-211 NMRA which results in the attorney's resignation, suspension or disbarment shall provide the notice required herein to all clients and all opposing counsel and pro se parties, courts and administrative agencies in all litigated or administrative matters pending on the date that the conditional agreement was signed by the attorney. In any matter not involving a conditional agreement but in which the order of the Supreme Court suspending or disbarring an attorney delays the effective date of the resignation, suspension or disbarment, the attorney shall provide the notice required to all clients and all opposing counsel and pro se parties, courts and administrative agencies in all

litigated or administrative matters pending, on the date that the Court entered its order, regardless of the subsequent date that the suspension or disbarment takes effect. In all cases, the attorney shall also provide to each of the attorney's clients, to every opposing counsel and pro se party and to every court or administrative agency in each litigated or administrative matter a copy of the order accepting or providing for the attorney's resignation or disbarring or suspending the attorney. An attorney who has resigned, been disbarred or suspended from the practice of law, or who has signed a conditional agreement providing for the attorney's resignation, suspension or disbarment, may not recommend to the attorney's clients any other lawyer to represent them. In the event the client does not obtain substitute counsel before the effective date of the resignation, disbarment or suspension, it shall be the responsibility of the attorney to advise in writing the court or agency in which the proceeding is pending, of the attorney's automatic withdrawal from participating further in the proceeding. The notice to be given to the attorney for an adverse party or to any pro se party shall state the place of residence of the client of the attorney.

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

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

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

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

The attorney shall file with the affidavit copies of the letters required to be sent under Paragraphs A and B of this rule. Such affidavit shall also set forth the residential or other address where communications may thereafter be directed to the attorney. In order that the attorney can be located in the event complaints are made about the attorney's conduct while the attorney was engaged in practice, for a period of five (5) years following the effective date of the resignation, disbarment or suspension order, the attorney shall continue to file a registration statement in accordance with Rule 24-102.1 NMRA, listing the residence or other address where communications may thereafter be directed to the attorney.

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

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

[As amended by Supreme Court Order No. 12-8300-008, effective April 5, 2012; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015; as amended by Supreme Court Order No. 20-8300-014, effective December 31, 2020; as amended by Supreme Court Order No. 21-8300-030, effective for all cases filed or pending on or after December 31, 2021.]

17-213. Appointment of counsel.

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

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

C. **Procedures.**

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

(2) The inventorying attorney shall send to all clients of the attorney who are named on the list provided to disciplinary counsel written notice of the appointment of an inventorying attorney at the client's last known address, the grounds which required such appointment, and, for active cases, the need of the clients to obtain substitute counsel. Additionally, commencing within one (1) month after being appointed, the inventorying attorney shall publish once each Sunday for three (3) consecutive weeks in a newspaper of general circulation available in the county in which the suspended, disbarred, resigned, deceased or incapacitated attorney was maintained the attorney's principal office notice of the appointment of the inventorying attorney and instructions on how to contact the inventorying attorney for further information.

(3) A file may be returned to a client upon the execution of a written receipt, or released to substitute counsel upon the request of the client and execution of a written receipt by such counsel. The inventorying attorney shall deliver all such receipts to disciplinary counsel at the time of filing the application for discharge. On approval by the New Mexico Supreme Court of the application for discharge of the inventorying attorney, all files remaining in the possession of the inventorying attorney shall be transferred to the Office of Disciplinary Counsel and, thereafter, maintained for a period of five (5) years. After five (5) years, the files may be destroyed by disciplinary counsel in a secure manner which protects the confidentiality of the files provided that six (6) weeks before the destruction of such files, disciplinary counsel shall publish once each Sunday for three (3) consecutive weeks in a newspaper of general circulation available in the county in which the suspended, disbarred, resigned, deceased, or incapacitated attorney was maintained the attorney's principal office that the file will be destroyed on a date six (6) weeks after the date of the last publication unless the file is retrieved from the Office of Disciplinary Counsel by the client or former client prior to that date.

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

remaining trust funds cannot be determined to be payable to the lawyer, the lawyer's estate, or the lawyer's current or former clients, the inventorying attorney shall apply to the court in which the action was brought, or, if no action was commenced to the New Mexico Supreme Court, for an order directing payment of all remaining trust funds to the New Mexico Client Protection Fund for safeguarding and disbursement to persons who are entitled thereto.

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

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

F. **Liability of inventorying attorney.**

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

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

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

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

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

Such provisions shall, however, remain effective for such client or former client for any services performed as an inventorying attorney prior to the date of the retention agreement, and shall likewise remain effective for all other clients or former clients of the lawyer who is disbarred, resigned, suspended, incapacitated or deceased.

[As amended, effective August 1, 1988; as amended by Supreme Court Order No. 06-8300-032, effective January 15, 2007; by Supreme Court Order No. 12-8300-008, effective April 5, 2012; as amended by Supreme Court Order No. 20-8300-014, effective December 31, 2020.]

17-214. Reinstatement.

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

B. **Suspended attorneys.**

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

(2) Except as provided in Paragraph C of this rule, an attorney who has been suspended for a definite period of time more than six (6) months or for an indefinite period of time, not including any period of deferment, at any time after complying with the conditions of reinstatement, but in the case of the latter, no sooner than one (1) year after the date of the suspension, not including any period of deferment, and unless otherwise ordered by the Supreme Court, may file with the Disciplinary Board a petition for reinstatement attaching to the petition a copy of the order of suspension and an affidavit of compliance, where appropriate, stating that the attorney has complied with previously imposed conditions of reinstatement. The petition shall be considered by the Disciplinary Board under Paragraph E of this rule. If after receiving the recommendations of the Disciplinary Board, the petition is denied by the Supreme Court, the attorney is not entitled to petition for reinstatement prior to the expiration of a twelve (12) month period, commencing the date that the petition is denied by the

Supreme Court unless a shorter interval is directed in the order denying the petition for reinstatement.

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

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

E. **Procedure of reinstatement hearing.** Applications for reinstatement by attorneys who have been suspended for a definite period of time more than six (6) months, not including any period of deferment, or who have been indefinitely suspended for any period of time greater than six (6) months, not including any period of deferment, on account of misconduct, incompetency, or incapacity, or who have resigned while under investigation by the Disciplinary Board under Rule 17-209 NMRA, or who were placed on disability inactive status under Rule 17-208 NMRA shall be referred by the Disciplinary Board to an appropriate hearing committee. The hearing committee shall promptly schedule a hearing at which the respondent-attorney shall have the burden of demonstrating by clear and convincing evidence that the respondent-attorney has the moral qualifications to practice law; that the respondent-attorney is once again fit to resume the practice of law; and that the resumption of the respondent-attorney's practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or the public interest. At the conclusion of the hearing, the hearing committee shall promptly file a report containing its findings of fact, conclusions, and recommendations, and shall transmit the same, together with the record, to the Disciplinary Board. The Board shall review the report of the hearing committee and the record, and it may, upon request of either the respondent-attorney or disciplinary counsel made within ten (10) days of the receipt of the hearing committee's record by the Board, require the submission of briefs and hear oral argument. The Board shall consider only the evidence in the record before the hearing committee and shall not

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

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

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

H. **Attorneys on probation.** If an attorney has been placed on probation under Rule 17-206(B) NMRA, and is not otherwise required to or has successfully petitioned for reinstatement under Paragraph E of this rule, upon completion of the probationary period, the attorney may file with the Disciplinary Board a petition to be released from probation, along with an affidavit of compliance and any supporting documentation detailing the manner in which the attorney has satisfied or complied with the terms and conditions of probation. The petition, affidavit of compliance with probation, and any objections by disciplinary counsel to the petition shall be reviewed by a member of the Disciplinary Board. Oral argument, briefing, or both may be held in the discretion of the Board member upon request of either party or at the request of the Board member. If argument is held, it shall be conducted in accordance with procedures set forth in Rule 17-314 NMRA. The Board member may also refer the petition to a hearing committee for further proceedings under Paragraph E of this rule. After reviewing and investigating a petition for reinstatement, the Disciplinary Board may order the following:

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

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

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

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

ARTICLE 3
Rules of Procedure

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

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

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

C. **Service.** Except as otherwise provided in these rules, the specification of charges, all pleadings, notices, motions, orders, or other papers required to be served

may be served on a party unless the party is represented by an attorney in which case service may be upon the attorney. Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or party, by mailing it to the attorney or party at the address listed on the most recent registration statement filed under Rule 24-102.1 NMRA or by electronic transmission in accordance with Rule 12-307.2 NMRA to the email address of record listed on the most recent registration statement filed under Rule 24-102.1 NMRA. “Delivering a copy” as used in this rule means handing it to the attorney or to the party; leaving it at the attorney’s or party’s office with the attorney’s or party’s clerk or other person in charge thereof, or if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at the attorney’s or party’s dwelling house or usual place of abode with some person of suitable age and discretion therein. Service by mail is complete upon mailing and shall constitute notice as required by these rules. Service by electronic transmission is complete as defined by Rule 12-307.2 NMRA.

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

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

[As amended by Supreme Court order No. 13-8300-045, effective December 31, 2013; as amended by Supreme Court Order No. 17-8300-004, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. 21-8300-030, effective for all cases filed or pending on or after December 31, 2021.]

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.

17-303. Statute of limitations.

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

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

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

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

(1) become matters of public record by:

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

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

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

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

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

(2) are otherwise released according to these rules.

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

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

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

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

17-105 NMRA as well as the rules of confidentiality governing the Client Protection Fund Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

17-305. Abatement of investigation.

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

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

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

A. **During investigation.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. **Enforcement.**

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

(2) Any person who has been served with a subpoena pursuant to this rule may apply to the officer issuing the subpoena for an order to quash the subpoena. If any person fails to comply with a subpoena issued by the chair of the Disciplinary Board or the chair of a hearing committee in accordance with the provisions of this rule or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, at the

request of the officer issuing the subpoena, disciplinary counsel may apply to the Supreme Court for an order directing that person to take the requisite action. The Supreme Court may issue such order or may quash the subpoena. Should any person willfully fail to comply with an order of the Supreme Court, the Court may punish such person for contempt of court.

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

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

17-307. Investigation of complaints.

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

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

member designated by the chair may, at any time, order further investigation of a complaint that has been dismissed by a disciplinary counsel staff attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17-308. Informal admonitions.

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

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

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

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

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

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

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

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

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

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

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

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

(4) all known factors in aggravation; and

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

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

C. **Designation of hearing officer or committee and notice.** Upon filing of the specification of charges, the chair of the Disciplinary Board, or the chair's designee, shall forthwith designate a hearing officer or a hearing committee to hear the matter, and shall mail copies of the specification of charges to the hearing officer or to the

members of the committee. The chair shall issue a formal notice to the respondent-attorney which shall advise the respondent-attorney that formal charges of unprofessional conduct have been instituted against the respondent-attorney and referred for hearing to a hearing officer or hearing committee giving the names and addresses of the members thereof and identification of its chair. The notice shall formally advise the respondent-attorney of the following:

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

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

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

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

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

D. **Service.** Service of the specification of charges and formal notice shall be made upon the respondent-attorney in the manner prescribed by these rules. A copy of any procedural rules adopted by the Supreme Court or Disciplinary Board which have not been published in the NMRA shall be served on the respondent-attorney with the specification of charges. If service is by mail it shall be by certified mail, return receipt requested, directed to the respondent-attorney's address of record in the office of the clerk of the Supreme Court and shall be complete upon receipt by the respondent-attorney, or five (5) days after service or mailing, whichever is earlier.

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

17-310. Answer.

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

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

(2) any matter in mitigation; and

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

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

C. **Failure to answer.** If the respondent-attorney fails to answer the charges within twenty (20) days, in accordance with Paragraph B, or if the charges are not specifically denied in the answer, the charges will be deemed admitted. In this event, the sole issue to be determined by the hearing committee shall be the nature of the committee's recommendation to the Disciplinary Board after consideration of any facts in aggravation or mitigation of the respondent-attorney's misconduct.

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

17-311. Discovery.

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

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

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

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

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

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

[As amended, effective May 1, 1986.]

17-313. Hearings.

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

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

C. **Record of proceedings.** The chair of the hearing committee shall arrange for the taking of a record of all evidence received during the course of the hearing. The expense for the transcript of proceedings shall be paid for by the Disciplinary Board, but may be assessed against the respondent-attorney in accordance with Rule 17-106(B) NMRA. The record in all disciplinary hearings may be taken on an audio recording device approved by the administrative office of the courts or the chair of the hearing committee shall arrange for a stenographic record of the proceedings to be prepared. The committee shall cause a copy of the record to be filed with the Disciplinary Board, together with the hearing committee’s file of all pleadings and other material submitted

to it and all exhibits. The record of the hearing shall comply with the Rules Governing the Recording of Judicial Proceedings.

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

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

(2) all witnesses shall be sworn;

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

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

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

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

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

(8) within fourteen (14) days after the court reporter notifies the parties that the transcript of the hearing is complete or within a time period otherwise agreed to by the parties and the committee, both parties shall have the right to submit proposed findings and conclusions after which the hearing committee shall consider the case and shall, within thirty (30) days after the requested findings and conclusions are submitted, prepare, sign, and transmit to the Disciplinary Board its findings of fact, conclusions, and recommendations for discipline or other disposition of the matter. Upon the request of the chair of the hearing committee and upon a showing of good cause, the chair of the Disciplinary Board may extend the time for preparation and transmission to the Disciplinary Board of the committee's findings of fact, conclusions, and recommendations, which request may be made before or after the thirty (30) days, but such extension shall not exceed an additional sixty (60) days without a further showing of good cause. Regardless, the deadline for the hearing committee to submit its findings of fact, conclusions of law, and recommendations for discipline or other disposition is not jurisdictional and any failure by the hearing committee to submit its findings, conclusions, and recommendations in the specified time period does not otherwise

divest the hearing committee, the Board, or the Supreme Court of jurisdiction to consider and rule upon the charges against the respondent.

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

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

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

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

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

[As amended, effective January 1, 1986; August 1, 1988; as amended by Supreme Court Order No. 08-8300-001, effective January 16, 2008; by Supreme Court Order No. 12-8300-008, effective April 5, 2012; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015; as amended by Supreme Court Order No. 18-8300-009, effective December 31, 2018; as amended by Supreme Court Order No. 20-8300-014, effective December 31, 2020.]

17-314. Consideration by the Disciplinary Board.

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

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

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

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

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

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

17-315. Disciplinary Board decision.

Within thirty (30) days following the submission of briefs or oral argument or the receipt of the hearing committee's findings and recommendations, whichever date is last, the Disciplinary Board or panel shall render its decision. Upon a showing of good cause, the chair of the Disciplinary Board may extend the time within which the decision must be rendered. Regardless, the deadline for the Board or panel to render its decision is not jurisdictional and any failure to issue its decision within the specified time period does not otherwise divest the hearing committee, the Board, or the Supreme Court of jurisdiction to consider and rule upon the charges against the respondent and the hearing committee's decision. The Disciplinary Board or panel may accept, reject, modify, or increase the sanctions contained in the recommendations of the hearing

committee. The Disciplinary Board is not restricted to the findings of the hearing committee and may render its decision based upon the record and any additional findings that it may make. The decision of the Board will be carried out in the following manner:

A. **Dismissal.** In the event of a dismissal, the Board shall so notify the complainant, the respondent-attorney, disciplinary counsel, and chief disciplinary counsel;

B. **Informal Admonition.** In the event of a determination of an informal admonition, the Board shall instruct disciplinary counsel to prepare and deliver to the respondent-attorney a letter of informal admonition. At disciplinary counsel's option, the letter of informal admonition shall be mailed to the respondent-attorney or delivered to the respondent-attorney in person;

C. **Formal reprimand.** In the event of a determination of formal reprimand by the Board or probation, the Board shall arrange for the respondent-attorney to appear before the Board, and the chair of the Board or the chair's designee shall deliver the reprimand orally and in writing. Copies of the written reprimand shall be delivered to the respondent-attorney and disciplinary counsel;

D. **Probation by the Board.** In the event of a determination by the Board to impose probation or other conditions as a type of discipline by itself or in addition to an informal admonition or formal reprimand under Rule 17-206(B)(2) NMRA, the Board shall enter an order detailing the terms and conditions of such probation or other conditions and state whether the probation or other conditions are discipline by themselves or are in addition to an informal admonition or formal reprimand;

E. **Suspension; disbarment; public censure; restitution.** In the event of a determination by the Board to recommend suspension, disbarment, public censure, or probation by the Supreme Court under Rule 17-206(B)(1) NMRA, or restitution by the respondent-attorney, it shall prepare its written report and recommendations over the signature of the chair of the Board, or at the chair's option, the chair of the reviewing panel and transmit seven (7) copies of the same with three (3) copies of the entire record of the hearing and the pleadings filed in the proceedings to the clerk of the Supreme Court within thirty (30) days of the Board's decision. A copy of the report and recommendations shall be served on the respondent-attorney at the time it is transmitted to the clerk of the Supreme Court.

[As amended, effective August 1, 1988; as amended by Supreme Court Order No. 07-8300-015, effective June 13, 2007; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015; as amended by Supreme Court Order No. 18-8300-009, effective December 31, 2018.]

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 under Rule 17-315 NMRA:

(1) if the decision recommends public censure by the Supreme Court, suspension, disbarment, probation by the Supreme Court, restitution by the respondent-attorney, reinstatement after suspension or disbarment or denial of reinstatement after suspension or disbarment, a respondent-attorney or disciplinary counsel may request a hearing before the Supreme Court by filing a request for hearing with the clerk of the Supreme Court within fifteen (15) days of service of the decision and recommendations of the Disciplinary Board on the party requesting the hearing which the court, in its discretion, may grant;

(2) if the decision of the board is to assess costs, to impose a formal public reprimand by the board, to issue an informal admonition to the respondent-attorney, or to impose or terminate probation previously ordered by the Board, within fifteen (15) days of service of the decision, the respondent-attorney or disciplinary counsel may petition the Supreme Court for a hearing, which the Court, in its discretion, may grant. The petition must allege one of the following:

(a) the decision of the Disciplinary Board is in conflict with a decision of the Supreme Court;

(b) a significant question of law is involved;

(c) there is no substantial evidence in the record to support a material finding of fact on 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 on 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 briefs, including length limitations, shall be that which is prescribed by the Rules of Appellate Procedure.

C. Failure to request a hearing. If, within fifteen (15) days from the date that the recommendations of the Disciplinary Board are served, a respondent-attorney or disciplinary counsel has not requested or petitioned for a hearing with the Supreme Court in accordance with this rule, and:

(1) the recommendation is for public censure by the Supreme Court, suspension, disbarment, probation by the Supreme Court, or restitution by the respondent-attorney, the Supreme Court may issue a mandate accepting the recommendations of the Disciplinary Board or it may take any other action as it deems appropriate;

(2) the decision is to impose a formal reprimand by the Disciplinary Board, issue an informal admonition to the respondent-attorney, or order probation by the Disciplinary Board, the Disciplinary Board may issue the admonition, publish the formal reprimand, or place the attorney on probation in accordance with its decision.

D. Supreme Court decision. The Supreme Court, in its discretion and under any 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;

(a) if the Supreme Court imposes public censure as a form of discipline, the Disciplinary Board shall file a proposed public censure with the Supreme Court in accordance with Rule 17-317 NMRA; or

(4) impose probation or other conditions as a type of discipline by itself or may defer the effect of the discipline imposed.

[As amended, effective May 1, 1986; April 12, 2001; as amended by Supreme Court Order No. 06-8300-032, effective January 15, 2007; by Supreme Court Order No. 10-

8300-011, effective March 3, 2010; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015; as amended by Supreme Court Order No. S-1-RCR-2024-00108, effective December 31, 2024.]

17-317. Public censures.

A. **General.** In disciplinary proceedings in which public censure is recommended, the Board must submit proposed public censures to the Supreme Court in accordance with the procedures outlined in this rule.

B. **Form.** Proposed public censures shall be prepared in the following form, unless otherwise ordered by the Supreme Court:

(1) proposed public censures shall be limited to fifteen (15) pages, double-spaced, and written in fourteen (14) point Times New Roman font;

(2) proposed public censures shall include, at minimum, a procedural history, including an explanation of the rule(s) violated with rule citations, and background and discussion sections with citations to relevant authority and the record proper; and

(3) all citations in proposed public censures shall conform to Rule 23-112 NMRA.

C. **Procedure.** The Board shall file proposed public censures with the Supreme Court in accordance with one of the two procedures outlined below. Proposed public censures and responses shall be filed and served in accordance with Rule 12-307 NMRA.

(1) For proceedings before the Supreme Court on petition to accept a stipulated agreement and consent to discipline under Rule 17-211 NMRA, proposed public censures shall be stipulated to by the parties and filed with the petition. The Board shall also submit a copy of the proposed public censure, in Microsoft Word format, to the Supreme Court clerk via email.

(2) For proceedings before the Supreme Court on a decision and recommendation for discipline filed under Rule 17-315 NMRA, proposed public censures shall be filed with the Supreme Court within forty-five (45) days after the filing of an order imposing a public censure as a form of discipline. The Board shall also submit a copy of the proposed public censure, in Microsoft Word format, to the Supreme Court clerk via email.

(a) A response/objection to the proposed public censure under this subparagraph shall be timely if filed within fifteen (15) days of the filing of the proposed public censure, see Rule 12-309(E) NMRA, but the findings and conclusions adopted by the Supreme Court in its order imposing discipline are final.

(b) No reply to the response shall be permitted without further order of the Supreme Court.

D. **Supreme Court decision.** The final form and substance of a public censure shall be subject to the Supreme Court's discretion, irrespective of whether the parties have consented or stipulated to the proposed public censure.

[Adopted by Supreme Court Order No. S-1-RCR-2024-00108, effective December 31, 2024.]

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

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 (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
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.)