

**PROPOSED REVISIONS TO THE CODE OF PROFESSIONAL CONDUCT  
PROPOSAL 2026-014**

**March 6, 2026**

The Code of Professional Conduct Committee has recommended amendments to Rule 16-804 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's website at <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, New Mexico 87504-0848  
rules.supremecourt@nmcourts.gov  
505-827-4837 (fax)

**Your comments must be received by the Clerk on or before April 5, 2026**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

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**16-804. Misconduct.**

It is professional misconduct for a lawyer to:

- A. violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another;
- B. commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- C. engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- D. engage in conduct that is prejudicial to the administration of justice;
- E. state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- F. knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.
- G. engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, or marital status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 16-116 NMRA. This paragraph does not preclude legitimate advice or advocacy consistent with these rules.

[As amended by Supreme Court Order No. 08-8300-029, effective November 3, 2008; as amended by Supreme Court Order No. 19-8300-012, effective December 1, 2019; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary. —**

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph A, however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] A lawyer that creates or participates in a one-party recording does not violate Paragraph C unless the lawyer's conduct involves dishonesty, fraud, deceit, or misrepresentation. For example, it is not a violation of Paragraph C for a lawyer or a lawyer's agent to record another lawyer, or for a lawyer to advise a client that the client may make a one-party recording. Before a lawyer makes any recording of an unrepresented non-party, a lawyer acting within the scope of their profession representing a client has an ethical duty to inform an unrepresented non-party that the lawyer is a lawyer and whom the lawyer represents. Without leave of court, such recording of an unrepresented non-party or a one-party recording of a client may only be used for the lawyer's own work product or to defend the lawyer in a criminal, disciplinary or civil grievance proceeding.

[2] [3] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, which have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] [4] Discrimination and harassment by lawyers in violation of Paragraph G undermine confidence in the legal profession and the legal system. Such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others. Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature. The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of Paragraph G.

[4] [5] Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers, and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business, or social activities in connection with the practice of law. Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining, and advancing diverse employees or sponsoring diverse law student organizations.

~~{5}~~ [6] A lawyer does not violate Paragraph G by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of underserved populations in accordance with these rules and other law. A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. *See* Rule 16-102(B) NMRA.

~~{6}~~ [7] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 16-102(D) NMRA concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

~~{7}~~ [8] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

[Adopted by Supreme Court Order No. 08-8300-029, effective November 3, 2008; as amended by Supreme Court Order No. 19-8300-012, effective December 1, 2019; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]



New Mexico  
Courts

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## [rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

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Supreme Court <noreply@nmcourts.gov>

Wed, Mar 11, 2026 at 11:26 AM

Reply-To: noreply@nmcourts.gov

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**Proposal Number** 16-804

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**Comment** This proposed rule should be in 16-403 and not 16-804. In addition, why does a lawyer need leave from court? I don't understand the basis for that. It is no different from obtaining a statement or sworn statement from a witness and we don't need leave from the court to use the statement in those circumstances. Besides, it would contrary to judicial economy, creating additional hearings and revealing work product strategy.

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**New Mexico  
Courts**

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## [rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

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**Supreme Court** <noreply@nmcourts.gov>

Wed, Mar 11, 2026 at 1:09 PM

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**Proposal  
Number** 2026-014

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**Comment** I have reviewed the proposed Rule change, which is actually an addition to the Committee Commentary for Rule 16-804. I urge the Court to reject this change.

The first problem is that the proposed change is not to the Rule itself, but to the Committee Commentary. That could cause many attorneys to miss the change once it is enacted. In addition, it seems like the change should be to Rule 16-403, Communications with unrepresented persons, not to Rule 16-804. It would most likely not occur to an attorney to look under Rule 16-804 when looking at the Code for communications with unrepresented persons.

The second problem is that attorneys should be allowed to communicate with unrepresented persons and be able to rely upon what the person says if there is full disclosure. So, for example, if i were to call a witness to a car crash, identify myself as an attorney and identify my client, i should be allowed to record the conversation with the person's permission and use that conversation for impeachment purposes. Of course all that information should be in the recording. I have done this many times and used the recording for impeachment in the past. If using the recording for impeachment is not allowed, then i would have to hire a private investigator at my clients' cost--which would be a totally unnecessary cost. I would also add that even the best private investigators do not ask the follow up questions i would like them to ask.

For all of these reasons, i strongly urge the Court not to adopt the provision of this amendment forbidding the use of the recording for impeachment.

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New Mexico  
Courts

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**Supreme Court** <noreply@nmcourts.gov>  
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Thu, Mar 12, 2026 at 7:23 PM

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**Proposal Number** 2026-014

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**Comment** The portion of this proposed rule that prohibits use of any recorded conversation, even having advised the speaker of one's status as an attorney, for impeachment purposes strikes me as fundamentally unfair and creating an unnecessary and confusing conflict with existing Rules of Evidence. Any prior statement, particularly if known through lawful means, should be available for use as impeachment evidence.

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New Mexico Courts

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## [rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

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Supreme Court <noreply@nmcourts.gov>

Sun, Mar 15, 2026 at 10:33 AM

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**Proposal Number** 2026-014

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**Comment**

It is unclear why such a rule change here is necessary, and more specifically, just because it's a commentary change that can potentially catch more people off guard. It actually encourages people to get an outside investigator instead of having an attorney do it themselves, which creates more challenges for all parties involved and frankly moves away from the overall thrust of the rule.

This creates a very specific carve out of the rule that isn't necessary, especially if the attorney advises they are an attorney. It is up to the individual being spoken to whether or not they want to obtain counsel or speak without counsel. They represent their own interests. Sure, if an attorney deceives them; that is already covered by the misconduct rule, further making this commentary confusing and superfluous.

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