

**PROPOSED REVISIONS TO THE ATTORNEY LICENSING AND
MINIMUM CONTINUING LEGAL EDUCATION RULES
PROPOSAL 2021-028**

July 16, 2021

The Supreme Court is considering amendments to Rules 15-302, 16-104, 17-202, 18-101, 18-102, 18-201, 18-203, 18-204, 18-301, and 24-102 NMRA; the adoption of new Rules 24-102.1 and 24-102.2 NMRA; and the withdrawal of Rules 18-103, 18-202, 18-302, and 18-303 NMRA. Currently, annual requirements for bar dues and MCLE are on two separate tracks with different deadlines. These proposals consolidate the two separate processes into a single set of requirements, deadlines, and fees. The umbrella rule is Rule 24-102 NMRA, which has been expanded to include all annual license renewal requirements. The other proposed amendments align with those set forth in Rule 24-102. If the amendments are approved, any references to former rule numbers throughout the various rule sets will be updated accordingly.

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 web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before August 16, 2021, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

15-302. Admission to practice.

A. **Time for admission.** Applicants who have qualified for admission and applicants who are being admitted with conditions set by the Supreme Court shall be granted a license to practice law in all the courts of this state. Applicants will be admitted at the next regular session of the Supreme Court [~~next~~] following fulfillment by the applicant of all requirements of these rules. Successful applicants shall arrange with the court clerk to present themselves for admission within six (6) months after notification that they have satisfied all requirements for admission or follow the requirements for out-of-state swearing-in, as prescribed by the Board of Bar Examiners. [~~Upon~~] On good cause presented in writing prior to expiration of [~~such~~] the six (6) month period, the [~~board~~] Board of Bar Examiners may extend the period for admission. Applicants who fail to present themselves or apply for an extension within the period above

fixed, or who fail to arrange for out-of-state swearing-in as prescribed by the Board of Bar Examiners, will be deemed to have abandoned their application for admission.

B. Reinstatement from inactive status or suspension under Rule 24-102 NMRA.

(1) A member of the bar who has been on inactive status and in good standing in the state bar for a period of one (1) year or more under the Rules Governing the New Mexico Bar who wishes to return to active status shall be required to file an application for reinstatement to active status with the Board of Bar Examiners for recommendation to the Supreme Court, and shall be required to pay to the Board of Bar Examiners a fee of three hundred fifty dollars (\$350.00), plus any reasonable additional expenses, ~~[attorneys]~~ attorney fees, and costs in connection with any investigations and hearings as the ~~[board]~~ Board of Bar Examiners deems necessary. Reinstatement shall be recommended upon a showing that the applicant satisfies all applicable requirements for an active status attorney in New Mexico. Upon receipt of a recommendation for reinstatement from the Board of Bar Examiners, the clerk of the Supreme Court shall issue a certificate of reinstatement to active status unless otherwise ordered by the Supreme Court.

(2) A member of the bar who has been suspended under Rule 24-102 NMRA who wishes to be reinstated to active status ~~[for a period of one (1) year or more for nonpayment of active status dues or fees or for non-compliance with MCLE requirements]~~ shall be required to file an application for reinstatement to active status with the Board of Bar Examiners for recommendation to the Supreme Court, and shall be required to pay to the Board of Bar Examiners a fee of three hundred fifty dollars (\$350.00), plus any reasonable additional expenses, ~~[attorneys]~~ attorney fees, and costs in connection with any investigations and hearings as the ~~[board]~~ Board of Bar Examiners deems necessary. Reinstatement shall be recommended upon a showing that the applicant has remedied the deficiencies that led to the suspension, paid the reinstatement fee to the State Bar of New Mexico required under Rule 24-102(F) NMRA, and satisfies all other applicable requirements for an active status attorney in New Mexico. Upon receipt of a recommendation for reinstatement from the Board of Bar Examiners, the clerk of the Supreme Court shall issue a certificate of reinstatement to active status unless otherwise ordered by the Supreme Court.

(3) Unless otherwise ordered by the Supreme Court, an applicant for reinstatement under this paragraph will not be required to take the bar examination.

C. Reinstatement; additional condition. The Supreme Court, as a condition of reinstatement, may impose a requirement that the applicant enroll in continuing legal education classes or a bar review course or any other requirement that the Supreme Court may deem necessary.

[As amended, effective November 1, 1994; as amended by Supreme Court Order No. 15-8300-018, effective November 1, 2015; 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. _____, effective _____.]

16-104. Communication.

A. Status of matters. A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Paragraph E of Terminology of the Rules of Professional Conduct, is required by these rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

B. Client's informed decision-making. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

C. Disclosure of professional liability insurance.

(1) If, at the time of the client's formal engagement of a lawyer, the lawyer does not have a professional liability insurance policy with limits of at least [~~one hundred~~] one hundred thousand dollars (\$100,000) per claim and [~~three hundred~~] three hundred thousand dollars (\$300,000) in the aggregate, the lawyer shall inform the client in writing using the form of notice prescribed by this rule. If during the course of representation, an insurance policy in effect at the time of the client's engagement of the lawyer lapses, or is terminated, the lawyer shall provide notice to the client using the form prescribed by this rule.

(2) The form of notice and acknowledgment required under this Paragraph shall be:

NOTICE TO CLIENT

Pursuant to Rule 16-104(C) NMRA of the New Mexico Rules of Professional Conduct, I am required to notify you that ["I" or "this Firm"] [do not][does not][no longer] maintain[s] professional liability malpractice insurance of at least [~~one hundred~~] one hundred thousand dollars (\$100,000) per occurrence and [~~three hundred~~] three hundred thousand dollars (\$300,000) in the aggregate.

Attorney's signature

CLIENT ACKNOWLEDGMENT

I acknowledge receipt of the notice required by Rule 16-104(C) NMRA of the New Mexico Rules of Professional Conduct that [insert attorney or firm's name] does not maintain professional liability malpractice insurance of at least [~~one hundred~~] one hundred thousand dollars (\$100,000) per occurrence and [~~three hundred~~] three hundred thousand dollars (\$300,000) in the aggregate.

Client's signature

(3) As used in this Paragraph, "lawyer" includes a lawyer provisionally admitted under Rule 24-106 NMRA and Rules 26-101 through 26-106 NMRA; however it does not include a lawyer who is a full-time judge, in-house corporate counsel for a single corporate entity, or a lawyer who practices exclusively as an employee of a governmental agency.

(4) A lawyer shall maintain a record of the disclosures made pursuant to this rule for six (6) years after termination of the representation of the client by the lawyer.

(5) The minimum limits of insurance specified by this rule include any deductible or self-insured retention, which must be paid as a precondition to the payment of the coverage available under the professional liability insurance policy.

(6) A lawyer is in violation of this rule if the lawyer or the firm employing the lawyer maintain a professional liability policy with a deductible or self-insured retention that the

lawyer knows or has reason to know cannot be paid by the lawyer or the lawyer's firm in the event of a loss.

(7) A lawyer in active status shall certify on the registration statement required under Rule 24-102.2 NMRA whether the provisions of this paragraph apply to the lawyer's practice of law and, if so, whether the lawyer has a professional liability insurance policy that meets or exceeds the limits set forth in Subparagraph (C)(1) of this rule. If the lawyer in active status has a professional liability insurance policy, the lawyer shall also certify the name of the insurer.

[Amended by Supreme Court Order No. 08-8300-029, effective November 3, 2008; by Supreme Court Order No. 09-8300-029, effective November 2, 2009; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. —

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these rules require that a particular decision about the representation be made by the client, Subparagraph (1) of Paragraph A of this rule requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. *See* Paragraph A of Rule 16-102 NMRA of the Rules of Professional Conduct.

[3] Subparagraph (2) of Paragraph A requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations – depending on both the importance of the action under consideration and the feasibility of consulting with the client – this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, Paragraph A(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, Paragraph A(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client

before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Paragraph E of Terminology of the Rules of Professional Conduct.

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. *See* Rule 16-114 NMRA of the Rules of Professional Conduct. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. *See* Rule 16-113 NMRA of the Rules of Professional Conduct. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Paragraph C of Rule 16-304 NMRA of the Rules of Professional Conduct directs compliance with such rules or orders. Disclosure of Professional Liability Insurance

[8] Paragraph C of this rule requires a lawyer to disclose to the clients whether the lawyer has professional liability insurance satisfying the minimum limits of coverage set forth in the rule. Subparagraph (3) of Paragraph C defines "lawyer" to include lawyers provisionally admitted under Rule 24-106 NMRA and Rules 26-101 to 26-106 NMRA. Rule 24-106 NMRA applies to out-of-state lawyers who petition to be allowed to appear before the New Mexico courts. Rules 26-101 to 26-106 NMRA apply to foreign legal consultants. Subparagraph (4) of Paragraph C requires a lawyer to maintain a record of disclosures made under this rule for six (6) years after termination of the representation of the client by the lawyer. In this regard, the lawyer should note that trust account records must be kept for five (5) years but the statute of limitations for a breach of contract claim is six (6) years. Subparagraph (5) of Paragraph C provides that the minimum limits of insurance specified by the rule includes any deductible or self-insured retention. In this regard, the use of the term "deductible" includes a claims expense deductible. The professional liability insurance carrier must agree to pay, subject to exclusions set forth in the policy, all amounts that an insured becomes legally obligated to pay in excess of the deductible or self-insured retention shown on the declarations page of the policy.

[Adopted by Supreme Court Order No. 08-8300-026, effective November 3, 2008; amended by Supreme Court Order No. 09-8300-029, effective November 2, 2009; as amended by Supreme Court Order No. 13-8300-038, effective December 31, 2013; as amended by Supreme Court Order

No. _____, effective _____.]

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

~~[A. Registration statement.~~

~~(1) Within three (3) months of admission to practice in this state, and, thereafter, on or before January 1 of every year, every attorney admitted to practice in this state shall submit to the state bar and to the clerk of the Supreme Court, on forms provided by the state bar and approved by the Supreme Court, a registration statement setting forth the following:~~

- ~~(a) the attorney's address of record;~~
- ~~(b) the street address where client files or other materials related to the attorney's practice are located;~~
- ~~(c) the attorney's telephone number of record;~~
- ~~(d) the attorney's email address of record; and~~
- ~~(e) such other information as the Supreme Court may from time to time direct.~~

~~(2) The attorney's "address of record" is the attorney's official address for service of notices, pleadings, papers, and information. The "address of record" is a public record and upon request will be provided to any member of the public. The attorney may also maintain a separate address with the state bar for purposes of publications of the state bar and solicitations.~~

~~(3) In addition to the annual registration statement, every attorney shall file a supplemental statement with the state bar and with the clerk of the Supreme Court showing any change in the information previously submitted within thirty (30) days of such change. Upon the request of any attorney providing a street address under the provisions of this rule that is not the "address of record," the street address shall not be disclosed to any member of the public.~~

~~(4) The attorney's email address of record may be used in the Supreme Court's electronic filing system in accordance with Rule 12-307.2 NMRA for the electronic service of any documents filed in the Supreme Court under the Rules Governing Discipline.~~

~~B. Certificate of compliance. In order to enable an attorney to demonstrate compliance with the requirements of Paragraph A of this rule, upon request of an attorney, the clerk of the Supreme Court shall issue a certificate of compliance to an attorney who has complied with the annual registration requirements of these rules.~~

~~C. Failure to file.] [Any] An attorney who fails to file the registration statement, or supplement thereto, in accordance with the requirements of [Paragraph A of this rule, may be summarily suspended and barred from practicing law in this state until the attorney has complied therewith] 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.~~

~~[D. Inactive attorneys. An attorney who has retired, or is not engaged in practice as provided in Paragraph A of this rule, may petition the Board of Bar Commissioners on forms provided by the state bar that the attorney desires to assume inactive status and to discontinue the practice of law. Upon the receipt of such petition by the Board of Bar Commissioners, the attorney shall no longer be eligible to practice law in any jurisdiction pursuant to the attorney's New Mexico license, except as provided by the Legal Service Provider Limited Law License under Rule 15-301.2 NMRA and as an emeritus attorney as authorized under Rule 24-111 and shall continue to file an annual inactive status registration statement with the state bar. The attorney will be relieved from the payment of the fee imposed by Rule 17-203 NMRA, and Rule 17A-003 NMRA, but is~~

required to pay the inactive status fee set by the Board of Bar Commissioners, provided, however, that an emeritus attorney as authorized under Rule 24-111 shall not be required to pay the inactive status fee. Upon the filing of a petition to assume inactive status, the state bar shall notify the Supreme Court of the filing of the petition. Upon receipt of the notice, the Supreme Court shall change the membership status of the attorney on the official roll of attorneys effective as of the date on the petition submitted to the Board of Bar Commissioners.

~~_____ E. **Reinstatement of inactive attorneys.** The inactive attorney may petition for reinstatement on a form prescribed by the Board of Bar Examiners and may be granted reinstatement by the Supreme Court upon recommendation of the Board of Bar Examiners as provided in Rule 15-302(B) and (C) NMRA. A petition for reinstatement shall be granted as a matter of course, unless the Board of Bar Examiners shall determine for good cause that the petition should be denied, in which event the applicant shall have the right to a hearing as provided in Rule 15-301 NMRA of the Rules Governing Admission to the Bar. Prior to reinstatement, the Board of Bar Examiners shall inquire of the Disciplinary Board if it knows of any reason why the attorney should not be reinstated.~~

~~_____ F. **Service.** The Supreme Court or Disciplinary Board may serve any order, pleading, or other matter on an attorney by mailing or emailing a copy of such order, pleading, or other matter to the attorney at the address of record or email address of record shown on the latest registration statement on file with the Supreme Court and this shall constitute notice as required by these rules.~~

~~_____ G. **Applicability of rule.** The provisions of this rule shall not apply to justices of the Supreme Court, judges of the Court of Appeals, district judges, magistrate judges, metropolitan judges, or municipal judges who are prohibited by statute or ordinance from practicing law.]~~

~~[As amended, effective January 1, 1987; January 1, 1997; November 30, 2004; as amended by Supreme Court Order 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. _____, effective _____.]~~

18-101. Purpose and title.

A. **Purpose.** It is of primary importance to the members of the New Mexico State Bar and to the public that attorneys continue their legal education throughout the period of their active practice of law. These rules establish the requirements for minimum continuing legal education, or “MCLE.”[-]

B. **Title.** These rules shall be known as the Rules for Minimum Continuing Legal Education, or “MCLE Rules.”[-]

[As amended by Supreme Court Order No. _____, effective _____.]

18-102. ~~[Minimum continuing legal education board]~~ Administration of MCLE Program.

A. **Board ~~[established]~~ of Bar Commissioners.**

The Board of Bar Commissioners of the State Bar of New Mexico (BBC or board) or its designee shall [~~act as the minimum continuing legal education board for purposes of these rules or~~

~~may appoint active attorneys licensed in New Mexico from among its membership to serve in that capacity]~~ be responsible for administering the MCLE program as required under these rules.

B. Powers and duties of the board.

(1) The board shall have general supervisory authority over implementing and supervising the ~~[minimum continuing legal education]~~ MCLE requirements for members of the State Bar of New Mexico. ~~[The board shall provide the procedure for assuring compliance and enforcement of the requirements set by the board in furtherance of these duties.]~~

(2) The board shall ~~[have specific duties and responsibilities, as follows]~~ do the following in furtherance of its responsibility to administer the MCLE program:

(a) ~~[to—]~~implement practice and procedures for the effective administration of these rules;

(b) ~~[to—]~~accredit institutions and approve CLE programs that will ~~[provide courses and to approve programs which will]~~ satisfy the educational requirements of these rules in accordance with Rule 18-203 NMRA; [and]

(c) ~~[to—]~~report annually to the Supreme Court on the activities and operations of the board ~~[to the Supreme Court.]~~ under these rules; and

(d) develop options to encourage low cost or free CLE programs that would qualify for MCLE credit under Rule 18-201 NMRA.

C. MCLE fees; uses. The board may establish reasonable fees as may be necessary to operate the MCLE program required under these rules.

~~[C.—~~**Finances.**

~~—— (1) — The board may establish reasonable fees, and such other requirements as may be necessary to carry out the program, subject to approval by the Court. However, sanctions collected under Rule 18-301 NMRA not necessary to carry out the program may be transferred by the Court on an annual basis for administration of other Court regulated programs.~~

~~—— (2) — Members of the board shall serve without compensation, but shall be paid mileage and per diem consistent with the guidelines approved by the Supreme Court for the judicial branch of government. The mileage and per diem shall be paid out of the funds collected by the board.~~

~~—— (3) — The board may establish such requirements as may be necessary to implement and carry out this program, including imposition of reasonable certification and filing fees, all subject to prior approval by the Supreme Court.~~

D. Board expenses. Subject to the approval of the Supreme Court, the board may appoint or contract for such services, equipment, facilities, and staff as may be needed for the efficient administration of the board's work and shall promulgate policies for the orderly and efficient conduct of its duties. The annual salaries and other expenses incurred under this rule shall be paid by the board out of the funds collected under Paragraph C of this rule.]

[As amended, effective September 15, 1987; January 1, 1990; November 1, 1991; as amended by Supreme Court Order No. 06-8300-033, effective January 1, 2007; as amended by Supreme Court Order No. 18-8300-019, effective November 1, 2018; as amended by Supreme Court Order No. _____, effective _____.]

18-201. Minimum educational requirements.

A. Hours required. Every [active-licensed] member of the state bar in active status, beginning in the first full year following the date of admission, shall complete twelve (12) hours

of ~~[continuing legal education]~~ CLE during each year as provided by these rules. One (1) hour of ~~[continuing legal education]~~ CLE is equivalent to sixty (60) minutes of instruction. This rule sets forth the requisite hours and categories of ~~[continuing legal education]~~ CLE. Rule 18-204 NMRA sets forth the means by which the hours may be acquired.

B. **Legal substantive credits.** Ten (10) of the required twelve (12) hours may include legal subjects or subjects which relate to the individual attorney's practice of law. The hours shall be defined as general credits.

C. **Legal ethics and professionalism credits.** At least two (2) hours of the twelve (12) hours shall be devoted to board approved subjects dealing with legal ethics or professionalism. Excess ethics and professionalism credits shall be applied as follows:

first, to any deficit in general credits in the current ~~[compliance]~~ licensing year;

second, to the next ~~[compliance]~~ licensing year as carry-over ethics and professionalism credits; and

third, to the next ~~[compliance]~~ licensing year as carry-over general credits, subject to the limitations set forth in Paragraph D of this rule.

D. **Carry-over.** Any member may carry up to twelve (12) hours of excess credits earned in one (1) ~~[compliance]~~ licensing year over to the next ~~[compliance]~~ licensing year only. Only two (2) hours of ethics and professionalism credit may be carried over as part of the twelve (12) hours of credits. Excess ethics and professionalism credits can be converted to be used toward the substantive (general) requirement. Only four (4) self-study credit hours may be carried over as part of the twelve (12) hours of credits. No credit may be carried over for more than one (1) ~~[compliance]~~ licensing year.

E. **Judges.** Judges~~;~~ and retired judges who are members of the state bar on active status ~~[active licensed members of the state bar]~~, domestic violence special commissioners, and domestic relations hearing officers shall be required to complete the same number of hours of ~~[continuing legal education]~~ CLE as other ~~[active licensed]~~ bar members in active status. The means by which these individuals may satisfy their ~~[continuing legal education]~~ CLE requirements are set forth in Rule 18-204 NMRA.

[As amended, effective January 1, 1990; November 1, 1991; February 1, 1992; March 23, 1998; January 1, 2001; as amended by Supreme Court Order No. 05-8300-007, effective January 1, 2006; by Supreme Court Order No. 06-8300-033, effective January 1, 2007; by Supreme Court Order No. 11-8300-020, effective May 1, 2011 for compliance year ending December 31, 2011, and subsequent compliance years; as amended by Supreme Court Order No. 20-8300-015, effective December 31, 2020; as amended by Supreme Court Order No. _____, effective _____.]

18-203. Accreditation; course approval; provider reporting.

A. **Accreditation.** The board shall do the following:

(1) accredit and periodically review institutions

(a) that have a history of providing quality ~~[continuing legal education]~~ CLE courses; and

(b) that meet current accredited provider standards established by the board; and

(2) approve individual programs of continuing legal education. ~~[-The content of the instruction provided may include, but not be limited to, live seminars, participation in~~

~~educational activities involving the use of computer-based resources, audiotapes, and videotapes; and~~

~~(3) — periodically review accredited institutions.]~~

B. **Accredited institutions and program provider requirements.** Accredited institutions and program providers shall do the following:

(1) assure that each program addresses the ethical or professionalism implications where appropriate; provided, however, that only those portions of a program specifically approved or specified as granting ethics and professionalism credit shall be used to fulfill the attorney's ethics and professionalism requirement;

(2) assure that the course has significant intellectual or practical content and that its primary objective is to increase the participant's professional competence as an attorney;

(3) assure that the curriculum offered relates to legal subjects or subjects which relate to the individual attorney's practice of law, including legal ethics and professionalism;

(4) assure that presenters for all programs are qualified by practical or academic experience to teach the subject to be covered;

(5) assure that legal subjects are normally taught by attorneys;

(6) assure that, with the exception of wellness programs submitted by the New Mexico Lawyers and Judges Assistance Program, program faculty include at least one (1) lawyer, judge, or full-time law professor;

(7) assure that thorough, high quality, current, readable, carefully prepared written materials are distributed to all participants at or before the time the course is offered; and

(8) assure that a level of activity is noted on the promotional materials following the guidelines listed below:

(a) *Advanced.* An advanced ~~[continuing legal education]~~ CLE course should be designed for the practitioner who specializes in the subject matter of the course;

(b) *Intermediate.* An intermediate course is designed for the practitioner experienced in the subject matter, but not necessarily an expert. A survey course in which there have been recent, substantial changes will be deemed intermediate. In an intermediate course, some segments may be low intermediate or basic and others high or advanced. In those instances, the course taken as a whole will be considered intermediate;

(c) *Basic.* A basic course is designed for the practitioner with no experience or limited experience in the area of law with which the course deals. A survey course will be considered basic unless there are recent, significant changes in the law.

C. **Announcement of approval.** Providers shall announce, ~~[as to]~~ for a program that has been given approval, that: "This course has been approved by the ~~[New Mexico Minimum Continuing Legal Education Board]~~ Board of Bar Commissioners of the State Bar of New Mexico for _____ hours of credit."

D. **Provider attendance lists.** ~~[Under practices and procedures adopted by the board, all]~~ All ~~[continuing legal education]~~ CLE providers must, as a condition of accreditation or program approval, agree to provide the board a list of all New Mexico attorneys and judges who attended the ~~[continuing legal education]~~ CLE program and the number of hours claimed by each participant. The list and any required credit filing fees shall be provided within thirty (30) days of the program being held. CLE providers who fail to meet the thirty (30) day deadline may be subject to fines established by the board and loss of accredited status.

~~[E. — **Unaccredited providers.** All CLE providers located in New Mexico that are not accredited must seek preapproval for courses offered to New Mexico attorneys.]~~

[As amended, effective January 1, 1990; November 1, 1991; January 1, 1994; January 16, 1996; February 18, 1998; January 1, 2001; January 1, 2001; as amended by Supreme Court Order No. 05-8300-007, effective January 1, 2006; by Supreme Court Order No. 06-8300-033, effective January 1, 2007; by Supreme Court Order No. 08-8300-049, effective December 31, 2008; by Supreme Court Order No. 11-8300-020, effective May 1, 2011 for compliance year ending December 31, 2011, and subsequent compliance years; as amended by Supreme Court Order No. 17-8300-010, effective September 11, 2017; as amended by Supreme Court Order No. _____, effective _____.]

18-204. Earning credits; credit types.

A. **Scope.** This rule sets forth the means by which a member may acquire the credits required by Rule 18-201 NMRA.

B. **Live program credit.**

(1) Credit for attending approved live programs shall be based on one (1) hour of credit for each sixty (60) minutes of actual instruction time, which may include the following:

- (a) lecture;
- (b) panel discussion;
- (c) question-and-answer periods;
- (d) film presentation; or
- (e) time spent viewing ~~[videotapes]~~ video or listening to ~~[audiotapes]~~

audio at an organized open enrollment program at which there is a moderator assigned to supervise the program and to foster discussion among participants, and provided that this program is approved as provided for in these rules.

(2) The individual seeking live program credit must not have previously received credit for the same program.

C. **Self-study credit.** Attorneys may obtain up to four (4) self-study credits per ~~[compliance period]~~ licensing year. Self-study credits may be earned by participating in legal activities or listening to previously recorded courses, providing the following conditions are met:

(1) **Legal activities.** The ~~[MCLE Board]~~ Board of Bar Commissioners of the State Bar of New Mexico shall establish policies and procedures for accrediting the legal organizations to award CLE credits to attorneys who engage in certain legal activities. To receive CLE credit, attorneys must perform the legal activity through a ~~[MCLE-accredited]~~ BBC-accredited legal organization and receive a certificate of completion from that organization. Legal activities that may qualify for CLE credit include serving on ~~[MCLE-accredited]~~ BBC-accredited boards, committees, and commissions that perform legal work such as drafting rules, investigating cases, or participating in hearings; or performing pro bono legal services through a ~~[MCLE-accredited]~~ BBC-accredited legal service provider.

(2) **Previously recorded courses.** To be eligible for credit, the previously recorded course must comply with the standards defined in Rule 18-203 NMRA and attorneys seeking credit must provide a certificate of completion. The attorney seeking self-study credit must not previously have received self-study or live program credit for the same program.

D. **Speakers.** Speakers who participate in an accredited provider's program or an approved program may receive credit for preparation time and presentation time, including credit for repeated presentations, within the following parameters:

- (1) Speakers may receive credit for the actual presentation time.
- (2) Speakers may receive up to three (3) hours of credit for preparation time for each presentation hour.
- (3) For repeat presentations, the speaker may only receive credit for presentation time.

E. **Publications.**

- (1) Credit for one (1) hour may be earned for each sixty (60) minutes spent authoring or co-authoring written material that is actually published in a legal periodical, journal, book, or treatise approved by the board, provided that the following conditions are met:
 - (a) the material substantially contributes to the legal education or competency of the attorney and other attorneys; and
 - (b) the work is not done in the ordinary course of the attorney's practice of law or the performance of regular employment.
- (2) Credit is given ~~in~~ for the licensing year the work is accepted for publication, or in which publication actually occurs.
- (3) The maximum number of credits an attorney can earn for a publication is ten (10) general credits.

F. ~~[Other attorney reporting procedures]~~ **Attorney self-reporting procedures.**

- (1) An attorney may self-report credits only for courses that were not pre-approved by the board. If a course has been pre-approved by the board, the course provider will report credits and pay filing fees for program attendees.
- (2) To self-report credits, the attorney must first submit the course for approval under Rule 18-203(A)(2) NMRA and pay any required course approval fees. If the course is approved, the attorney may then file the credits and pay the filing fees. [An attorney wishing to obtain approval for a program, for which the provider has not sought accreditation or has not properly reported attendees, shall comply with the practices and procedures established by the board.]

~~[G. — Judges.~~

- ~~(1) In addition to other means set forth in this rule, judges, retired judges who are active licensed members of the state bar, domestic violence special commissioners, and domestic relations hearing officers may satisfy the continuing legal education requirements of Rule 18-201(F) NMRA by attending judicial education programs~~
 - ~~(a) provided by the Judicial Continuing Education Committee;~~
 - ~~(b) approved by the Minimum Continuing Legal Education Board;~~
 - ~~(c) provided by the Judicial Education Center; or~~
 - ~~(d) approved by the Administrative Office of the Courts under the Rules Governing Judicial Education.]~~

~~[(2) Annual training for metropolitan, district, and appellate court judges, domestic violence special commissioners, and domestic relations hearing officers shall include appropriate training in understanding domestic violence, as determined by the Judicial Continuing Education Committee.]~~

[Approved by Supreme Court Order No. 06-8300-033, effective January 1, 2007; as amended by Supreme Court Order No. 11-8300-020, effective May 1, 2011, for compliance year ending December 31, 2011, and subsequent compliance years; as amended by Supreme Court Order No. 20-8300-015, effective December 31, 2020; as amended by Supreme Court Order No. _____, effective _____.]

18-301. ~~[Compliance; reporting]~~ MCLE compliance and reporting; state bar annual statement; waiver.

A. ~~[Initial compliance year]~~ **Compliance year; reporting.** ~~[For members admitted on or after January 1, 1990 the initial compliance year shall be the first full compliance year following the date of admission.]~~ As a precondition to license renewal under Rule 24-102 NMRA, all members of the state bar in active status shall complete the required hours of MCLE under Rule 18-201 NMRA between January 1 and December 31 of the prior year. This period shall be known as the “compliance year.” The board shall verify that active members have completed the required MCLE credits.

B. ~~[Compliance year]~~ **Compliance review.** ~~[For all active members not mentioned in Paragraph A of this rule, the compliance year shall end December 31 of each year.]~~ The board updates each member’s MCLE record in real-time as credits are reported. Members may access their MCLE records through the state bar’s website or by contacting MCLE staff. Each member of the state bar in active status is responsible for periodically reviewing the member’s MCLE record and reporting any errors or omissions for the compliance year no later than February 15 of the current licensing year. Failure to timely report errors or omissions in the MCLE record may result in penalties.

C. ~~[Credit reporting deadline]~~ **Waiver of MCLE requirements.** ~~[The deadline for reporting prior year credits earned is May 1 of each year following the December 31 compliance deadline. The May 1 reporting deadline:~~

—— (1) —— ~~does not relieve an active licensed member from the compliance deadlines set forth in Paragraphs A and B of this rule;~~

—— (2) —— ~~does not relieve an active licensed member from the procedures set forth in Paragraph B of Rule 18-202 NMRA for seeking an extension of time to complete the credit requirements of these rules or a waiver from the credit requirements of these rules;~~

—— (3) —— ~~does not preclude the Supreme Court from taking disciplinary action pursuant to Paragraph G of this rule; and~~

—— (4) —— ~~does not preclude sanctions for late compliance set forth in Paragraph H of this rule.]~~ A member may request a waiver of MCLE requirements under Rule 24-102(D) NMRA.

D. ~~[Annual report statement]~~ **Failure to comply with MCLE requirements.** ~~[The board shall prepare an annual report statement for each licensed active member of the state bar for the previous compliance year which shall be provided to each member no later than the last day of February of each year. This report shall include reference to hours earned during the compliance year that have been reported by active members and the providers and any carryover hours from the previous compliance year. The annual report statement shall indicate whether the active member has completed credit requirements for the compliance year or whether the active member has a deficiency in credits. Any active member may notify the board of any errors or omission on their annual report statement.]~~ If a member fails or refuses to comply with the member’s MCLE

requirements, the member may be subject to late fees, a suspension, or other sanctions under Rule 24-102(E) NMRA.

~~[E. — **Second notification of deficiency to active members.** On or about April 1 of each year following the December 31 compliance deadline, the board shall prepare a letter for each active member of the state bar who continues to have a deficiency in credits for the previous compliance year. The letter will indicate that the active member has until April 30 of the present year to complete the necessary credit requirements for compliance.~~

~~F. — **Certification of deficiency.** The board shall annually compile and certify to the Supreme Court a list of those members of the state bar who prior to May 1 following the December 31 compliance deadline have failed to comply with the requirements of these rules.~~

~~G. — **Citation to show cause.** Whenever the board shall certify to the Supreme Court that any member of the state bar has failed or refused to comply with the provisions of these rules, 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 provision of these rules on or before the return day of such citation shall be deemed sufficient showing of cause and shall serve to discharge the citation.~~

~~H. — **Sanctions.** In addition to any disciplinary action taken by the Supreme Court pursuant to Paragraph G of this rule, each active member who fails to comply with the provisions of these rules is subject to monetary sanctions as follows:~~

~~—— (1) — Each active member who fails to complete the annual minimum educational requirements by December 31 of each year shall pay a fee of one hundred dollars (\$100.00). The fee shall be assessed in the annual report statement provided to each member pursuant to Paragraph A of this rule, and shall be paid no later than March 31. Payment of the one hundred dollar (\$100) fee does not eliminate compliance year credit requirements.~~

~~—— (2) — Each active member who, as of April 1, either continues to have a deficiency in credits for the previous compliance year or fails to pay the fee assessed pursuant to Subparagraph (1) of this paragraph shall pay an additional fee of two hundred fifty dollars (\$250.00). That fee shall be paid no later than April 30. Payment of the two hundred fifty dollar (\$250) fee does not eliminate compliance year credit requirements.~~

~~—— (3) — The board shall include in the certifications to the Supreme Court, pursuant to Paragraph F of this rule, any member who has failed to pay any assessed fees prior to May 1.~~

~~—— (4) — The board shall not waive any fees unless the member can prove that the member was in compliance with the minimum educational requirements prior to the applicable deadline.]~~

[As amended, effective January 1, 1990; November 1, 1991; July 18, 1994; September 4, 2001; March 5, 2002; October 30, 2002; as amended by Supreme Court Order No. 05-8300-007, effective January 1, 2006; by Supreme Court Order No. 06-8300-033, effective January 1, 2007; as amended by Supreme Court Order No. _____, effective _____.]

24-102. Annual license [fee] renewal requirements; noncompliance; reinstatement.

~~[A. — **Determination of fees.** Every member of the state bar shall, prior to the first day of January of each year, pay to the executive director of the state bar an annual license fee, which~~

fee shall be determined and fixed by the Board of Bar Commissioners prior to January of each calendar year.

~~B.——Late penalties.~~ Members whose dues are received after the first day of February will be assessed a late payment penalty of one hundred dollars (\$100.00). Active members who fail to disclose professional liability insurance coverage information after the first day of March will be assessed a late disclosure penalty of one hundred dollars (\$100.00).

~~C.——Delinquency certification.~~ If an inactive member's dues and late penalty are not received before the last day of March, the Board of Bar Commissioners shall, through its executive director, certify to the Supreme Court the name of such member on a list of names of all members failing to pay their annual license fees and late penalties. If an inactive member's dues and late penalty are not received before the last day of March, the inactive member shall be automatically placed on inactive suspended status by the state bar without referral to the Supreme Court and until such time as the inactive member corrects the deficiency. During the period of delinquency, the inactive member's membership status shall not be in good standing with the state bar, provided that the inactive suspended status shall not be reported to the Supreme Court nor reflected on the attorney's permanent record with the Supreme Court.

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

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

- (1) —— twice that member's then license fee, plus
- (2) —— all fees in arrears, plus
- (3) —— all accrued late penalty payments.

~~F.——Withdrawn status.~~ Any active or inactive attorney in good standing may file a written notice with the Supreme Court for voluntary withdrawal as a member of the bar of this state. Upon the filing of such written notice, the Supreme Court Clerk shall issue a certificate of withdrawal terminating the petitioner's membership in the bar of this state, and the petitioner shall not thereafter be entitled to practice law in the courts of this state. No order of suspension for failure thereafter to pay the annual bar license fee will be entered against such member, and the member's withdrawal will not prejudice the member's record or standing during the period of membership in the bar of this state. Unless otherwise ordered by the Supreme Court, a member who has voluntarily withdrawn or been placed on withdrawn status by the Supreme Court shall be required to readmit under Rule 15-103 NMRA, including taking the bar examination or qualifying for admission by motion under Rule 15-107 NMRA.

~~G. — **Waiver requests.** The Board of Bar Commissioners may waive all or part of any license fee in cases of extreme individual hardship. If the Board of Bar Commissioners receives a petition for waiver for all or part of any license fee relying on a physical, mental, or emotional infirmity, impairment, incapacity, or illness as an extreme individual hardship under this rule, the Board of Bar Commissioners shall refer the matter to the Disciplinary Board for a determination under Rule 17-208 NMRA. If the Disciplinary Board decides not to initiate proceedings under Rule 17-208 NMRA, the Board of Bar Commissioners shall be notified that it may proceed to consider whether the petition for waiver should be granted on the basis of an extreme individual hardship. In cases where a petition for waiver of all or part of any license fee has been rejected by the Board of Bar Commissioners, an attorney may petition the Supreme Court for modification or reversal of the action of the board.~~

~~H. — **Deposit, disbursement, and audit of fees collected.** All moneys collected by the executive director in accordance with the provisions of this rule shall be deposited to an account designated as State Bar of New Mexico general fund and shall be disbursed by order of the Board of Bar Commissioners in carrying out the functions, duties, and powers vested in said board. The Board of Bar Commissioners shall, on or before March 1 of each year, submit to the Supreme Court of New Mexico an accounting and audit of all funds received and disbursed during the prior calendar year. Such audit shall be performed by an auditor to be selected by the board. No member of the Board of Bar Commissioners or any committee member appointed by the board shall receive any compensation, but shall receive mileage and per diem at the same rate as provided for public officers and employees of the state and may be reimbursed with the approval of the Board of Bar Commissioners for expenses incurred in conjunction with travel on Board of Bar Commission business.]~~

A. **Scope.** This rule applies to all members of the state bar on active status, including judges who are attorneys licensed in New Mexico and attorneys holding limited licenses under Rule 15-301.1 NMRA or Rule 15-301.2 NMRA.

B. **Definitions.** The following definitions apply to this rule:

(1) “Active status” means

(a) an attorney admitted to the State Bar of New Mexico under Rule 15-302(A) NMRA who is not on inactive or withdrawn status under Rule 24-102.1 NMRA, who is not suspended under Subparagraph (E)(4) of this rule, and who is not suspended, disbarred, or on disability inactive status from the practice of law under the Rules Governing Discipline; or

(b) an attorney who holds a valid limited license under Rules 15-301.1 or 15-301.2 NMRA.

(2) “Annual certifications” means all certifications required to be completed annually by New Mexico Supreme Court rule or order, including

(a) pro bono certification required by Rule 24-108(C) NMRA;

(b) professional liability insurance certification required by Rule 16-104(C)(7) NMRA;

(c) succession plan certification required by Rule 16-119 NMRA, effective for registration statements submitted on or after October 1, 2022;

(d) trust account certification required by Rules 24-109(B)(7) and 17-204 NMRA; and

(e) trust accounting continuing legal education certification required by Rule 17-204(C) NMRA.

(3) “Licensing year” means January 1 through December 31 of the current year for which annual license renewal is required under Paragraph C of this rule.

(4) “MCLE” means the educational requirements for attorneys under the Rules for Minimum Continuing Legal Education.

C. **Annual license renewal.** No later than February 1 of every licensing year, every member of the state bar in active status shall renew the member’s license to practice law in New Mexico in accordance with this rule. License renewal shall be comprised of

(1) completion of a registration statement as defined in Rule 24-102.1 NMRA;
(2) completion of required annual certifications;
(3) completion of MCLE for the calendar year preceding the licensing year in accordance with Rule 18-201 NMRA; and

(4) payment to the executive director of the state bar an annual license fee, which fee shall be determined and fixed by the Board of Bar Commissioners prior to January of each calendar year or by Rule 15-301.1 NMRA or Rule 15-301.2 NMRA for holders of a limited license.

D. **Waiver.**

(1) **Waiver requests.**

(a) *Extreme hardship waiver.* Upon petition and a finding of the Board of Bar Commissioners of extreme individual hardship, the board may waive all or part of the annual license renewal requirements in Subparagraphs (C)(3) and (C)(4) of this rule and any associated late fees provided that the annual license renewal requirements in Subparagraphs (C)(1) and (C)(2) are satisfied. If the board receives a petition for waiver of all or part of the license renewal requirements based on a physical, mental, or emotional infirmity, impairment, incapacity, or illness as an extreme individual hardship under this rule, the board shall refer the matter to the Disciplinary Board for a determination under Rule 17-208 NMRA. If the Disciplinary Board decides not to initiate proceedings under Rule 17-208 NMRA, the Board of Bar Commissioners shall be notified that it may proceed to consider whether the petition for waiver should be granted on the basis of an extreme individual hardship.

(b) *U.S. military active duty waiver.* Members of the state bar in active status who are in the armed services of the United States and serve one hundred eighty (180) days or more in any licensing year on full-time active duty may petition the Board of Bar Commissioners for waiver of the annual license renewal requirements in Subparagraphs (C)(3) and (C)(4) of this rule provided that the annual license renewal requirements in Subparagraphs (C)(1) and (C)(2) are satisfied during that year. To be eligible for this waiver, the member must provide to the state bar a certification of the member’s military service dates.

(2) **Petition requirements.** Petitions for waiver must be in writing and filed with the Board of Bar Commissioners no later than February 1 of the licensing year. The petition must state briefly the facts supporting the petitioner’s claim and may be accompanied by supporting evidence or documentation. The Board may accept an untimely petition for waiver upon a showing of excusable neglect or circumstances beyond the control of the petitioner.

(3) **Hearing and decision on petition.** The board may, in its discretion, request that the petitioner appear before the board for a hearing on the petition. No record of the hearing is required, and the entire board need not be present at the hearing. The decision of the board to grant or deny a waiver request shall be final, provided that denied requests may be reviewed by

the Supreme Court upon request of a member who responds to a citation and order to show cause issued under Subparagraph (E)(3) of this rule.

E. Delinquency certification, late fee, and suspension.

(1) Members of the state bar in active status who, by February 1 of the licensing year, do not comply with any of the license renewal requirements in Paragraph C of this rule or receive a waiver under Paragraph D of this rule shall be assessed a late fee of two hundred seventy-five dollars (\$275.00) to be paid no later than April 30 of the licensing year. Payment of the late fee does not eliminate the requirement to comply with the license renewal requirements in Paragraph C of this rule.

(2) By the second Monday in May of the licensing year, the Board of Bar Commissioners, through its executive director, shall compile and certify to the Supreme Court a list of members of the state bar in active status who have failed or refused to comply with the license renewal requirements in Paragraph C of this rule or failed to pay the assessed late fee in Subparagraph (E)(1) of this rule.

(3) After receipt of the certification from the executive director of the state bar, the clerk of the Supreme Court shall issue a citation and order to show cause requiring the delinquent member to show cause before the Court, within fifteen (15) days after service of the citation, why the member should not be suspended from the practice of law in this state. Service of the citation and order to show cause may be personal, by first class mail, or by electronic service in accordance with Rule 12-307.2 NMRA through the Court's electronic filing system using the member's email address of record under Rule 17-202(A)(1)(d) NMRA. Completion of the licensing renewal requirements under Paragraph C of this rule and payment of assessed fees under Subparagraph (E)(1) of this rule on or before the response deadline in the citation and order to show cause shall be deemed sufficient showing of cause, and, unless otherwise ordered by the Supreme Court, the clerk shall issue an order dismissing the citation and order to show cause.

(4) Attorneys who fail to respond to the citation and order to show cause or fail to show that they have complied with the annual license renewal requirements in this rule shall be suspended from the practice of law in New Mexico. Suspension orders shall be served by certified mail and by electronic service in accordance with Rule 12-307.2 NMRA through the Court's electronic filing system using the member's email address of record under Rule 17-202(A)(1)(d) NMRA. The Board of Bar Commissioners shall report the names of attorneys suspended under this rule to the Disciplinary Board for a determination under Rule 17-208 NMRA.

F. Reinstatement. Any member suspended under the provisions of this rule who submits an application to the Board of Bar Examiners for reinstatement under Rule 15-302(B)(2) NMRA, shall be required to pay a reinstatement fee to the state bar of five hundred dollars (\$500.00) as a condition precedent to any grant of reinstatement.

G. Deposit, disbursement, and audit of fees collected.

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

(2) The Board of Bar Commissioners shall, on or before June 30 of each year, submit to the Supreme Court of New Mexico an accounting and audit of all funds received and disbursed during the prior calendar year. This audit shall be performed by an auditor to be selected [by the board].

(3) No member of the Board of Bar Commissioners or any committee member appointed by the board shall receive any compensation, but shall receive mileage and per diem at the same rate as provided for public officers and employees of the state and may be reimbursed with the approval of the Board of Bar Commissioners for expenses incurred in conjunction with travel on Board of Bar Commission business.

[As amended December 22, 1986; May 9, 1985; March 1, 1988; September 1, 1991; June 1, 1992; April 19, 2001; as amended by Supreme Court Order No. 06-8300-022, effective October 24, 2006; as amended by Supreme Court Order No. 13-8300-039, effective December 31, 2013; 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. _____, effective _____.]

[NEW MATERIAL]

24-102.1. Registration statements.

A. Deadlines; content.

(1) Within three (3) months of admission to practice in this state, and, thereafter, on or before January 1 of every year, every attorney admitted to practice in this state shall submit to the state bar a registration statement setting forth the following:

- (a) the attorney's address of record;
- (b) the street address where client files or other materials related to the attorney's practice are located;
- (c) the attorney's telephone number of record;
- (d) the attorney's email address of record; and
- (e) such other information as the Supreme Court may from time to time direct.

(2) The attorney's "address of record" and "email address of record" are the attorney's official addresses for service of notices, pleadings, papers, and information. An "address of record" is a public record and upon request will be provided to any member of the public. The attorney may also maintain a separate address with the state bar for purposes of publications of the state bar and solicitations.

(3) In addition to the annual registration statement, every attorney shall file a supplemental statement with the state bar showing any change in the information previously submitted within thirty (30) days of such change. Upon the request of any attorney providing a street address under the provisions of this rule that is not the "address of record," the street address shall not be disclosed to any member of the public.

(4) The attorney's "email address of record" may be used in the Supreme Court's electronic filing system in accordance with Rule 12-307.2 NMRA for the electronic service of any documents filed in the Supreme Court under the Rules Governing Discipline.

B. Reporting to the Supreme Court. The state bar shall be responsible for providing the clerk of the Supreme Court with the registration statement information in Subparagraphs (1) and (3) of Paragraph A of this rule, which shall be used by the clerk of the Supreme Court to update the attorney's contact information in the Supreme Court's official roll of attorneys.

[Adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

24-102.2. Inactive status members; withdrawn status.

A. **Definitions.** The following definitions apply to this rule:

(1) “Inactive status” means an attorney admitted to the State Bar of New Mexico under Rule 15-302(A) NMRA, who has retired or discontinued the practice of law under Rule 17-202(D) NMRA, and who is no longer eligible to practice law in New Mexico unless practicing under a legal services provider limited law license under Rule 15-301.2 NMRA or as an emeritus attorney under Rule 24-111 NMRA.

(2) “Withdrawn status” means an attorney admitted to the State Bar of New Mexico under Rule 15-302(A) NMRA, who has voluntarily withdrawn the attorney’s membership under Paragraph E of this rule or had such membership withdrawn by order of the Supreme Court, so that the attorney is no longer eligible to practice law in New Mexico.

B. **Annual inactive status membership renewal.** Each calendar year, every member of the state bar in inactive status shall, no later than February 1, renew the member’s inactive membership with the State Bar of New Mexico. Inactive status membership renewal shall be comprised of

(1) completion of an annual inactive status registration statement as provided in Rule 24-102.1 NMRA; and

(2) payment to the executive director of the State Bar of New Mexico an annual inactive status membership fee, which fee shall be determined and fixed by the Board of Bar Commissioners prior to January of each calendar year.

C. **Exemptions.** A member of the state bar in inactive status shall be exempt from the CLE and reporting requirements of Rules 18-201 and 18-301 NMRA.

D. **Delinquency certification.**

(1) Members of the state bar in inactive status who, by February 1, do not comply with one or more of the annual membership renewal requirements set forth in this rule shall be assessed a late fee of fifty dollars (\$50.00) to be paid no later than April 30 of the licensing year.

(2) If an inactive status member’s dues and late penalty are not received before the last day of April, the inactive status member shall be automatically placed on inactive suspended status by the State Bar of New Mexico without referral to the Supreme Court and until such time as the inactive status member corrects the deficiency. During the period of delinquency, the inactive status member shall not be in good standing with the State Bar of New Mexico. The inactive suspended status shall not be reported to the Supreme Court nor reflected on the attorney’s permanent record with the Supreme Court.

(3) If an inactive status member remains on inactive suspended status for five (5) or more years, the State Bar shall notify the clerk of the Supreme Court, who shall issue a certificate of withdrawal terminating the inactive status member’s membership in the State Bar of New Mexico, unless otherwise directed by the Supreme Court.

E. **Transferring to inactive status.** An attorney who has retired or is not engaged in the practice of law, may submit an application to the Board of Bar Commissioners on forms provided by the state bar for transfer to inactive status under this rule. Upon approval of the application by the Board of Bar Commissioners, the state bar shall notify the clerk of the Supreme Court. Upon receipt of the notice, the clerk of the Supreme Court shall change the membership status of the attorney on the official roll of attorneys effective as of the date on the application submitted to the Board of Bar Commissioners unless the Supreme Court directs otherwise.

Attorneys in inactive status are not required to pay the fees required under Rule 17-203 NMRA and Rule 17A-003 NMRA, but are required to pay the inactive status fee set by the Board of Bar Commissioners under this rule.

F. **Reinstatement of inactive attorneys.** An attorney on inactive status may seek reinstatement to active status under Rule 15-302(B)(1) NMRA.

G. **Withdrawn status.** Any member of the State Bar of New Mexico in good standing may file a written notice with the Supreme Court for voluntary withdrawal as a member of the bar of this state. Unless otherwise directed by the Supreme Court, on the filing of the written notice, the Supreme Court Clerk shall issue a certificate of withdrawal terminating the petitioner's membership in the State Bar of New Mexico, and the petitioner shall not thereafter be entitled to practice law in the courts of this state. No order of suspension for failure thereafter to meet any of the license renewal requirements in this rule or Rule 24-102 NMRA shall be entered against the member, and the member's withdrawal will not prejudice the member's record or standing during the period of membership in the bar of this state. Unless otherwise directed by the Supreme Court, a member who has voluntarily withdrawn or been placed on withdrawn status by the Supreme Court on or after December 31, 2016, shall be required to readmit under Rule 15-103 NMRA, including taking the bar examination or qualifying for admission by motion under Rule 15-107 NMRA.

H. **Notices of active status change to withdrawn status.** If a member of the state bar in active status files a notice of status change from active status to withdrawn status, the Supreme Court Clerk shall, prior to processing such a request, confirm with the Disciplinary Board that no disciplinary complaints or investigations are pending. If the member is the subject of a complaint or Disciplinary Board investigation, the Clerk shall not process the status change until the matter is resolved, unless otherwise directed by the Supreme Court.

[Adopted by Supreme Court Order No. _____ effective _____.]

[WITHDRAWN]

[18-103. Judicial Continuing Education Committee.

A. ~~Committee established.~~

~~_____ (1) _____ There is hereby established a judicial continuing education committee to be appointed by the Supreme Court, consisting of nine members.~~

~~_____ (2) _____ One member of the committee shall be an appellate court judge, six members shall be district court judges and two members shall be metropolitan court judges. As much as feasible, the members shall be appointed with staggered terms. The Supreme Court may also appoint a justice to serve as the Court's liaison to the committee. The director of the Judicial Education Center shall provide staff support for the committee in the performance of its duties.~~

~~_____ (3) _____ The chairperson of the committee shall be appointed by and shall serve at the pleasure of the Supreme Court.~~

B. ~~Powers and duties of the committee.~~ The committee shall:

~~_____ (1) _____ adopt continuing judicial education requirements for state appellate, district and metropolitan court judges;~~

~~_____ (2) _____ approve judicial continuing legal education courses;~~

~~_____ (3) _____ recommend to the Judicial Education Center and to continuing legal education providers appropriate judicial continuing legal education programs, including the agenda for the annual judicial conclave;~~

~~—— (4) —— subject to Supreme Court approval, adopt regulations to implement the effective administration of the committee's duties; and~~

~~—— (5) —— monitor continuing judicial legal education compliance by judges subject to these rules.]~~

[As amended, effective January 1, 1990; January 22, 1997; June 13, 2000; withdrawn by Supreme Court Order No. _____, effective _____.]

[WITHDRAWN]

[18-202. Exemptions and waivers.

~~A. —— **Inactive members.** An inactive member of the state bar shall be exempt from continuing legal education and reporting requirements of these rules.~~

~~B. —— **Extensions and waivers.**~~

~~—— (1) —— Upon petition and a finding by the board of special circumstances constituting undue hardship, the board may provide an extension of time to complete the credit requirements of these rules.~~

~~—— (2) —— Upon a finding by the board of special circumstances constituting undue hardship and with approval by the Supreme Court, the board may grant a waiver to an active licensed member from the credit requirements of these rules.~~

~~C. —— **U.S. military active duty.** An active licensed member of the state bar who is in the armed services of the United States and who serves one hundred eighty (180) days or more in any year on full time active duty is exempt from the minimum education requirements of Rule 18-201 NMRA during such year. In order to be eligible for this exemption, the member must provide to the board a certification of the military service and dates.]~~

[As amended, effective January 1, 1990; as amended by Supreme Court Order No. 06-8300-033, effective January 1, 2007; by Supreme Court Order No. 09-8300-041, effective November 18, 2009; withdrawn by Supreme Court Order No. _____, effective _____.]

[WITHDRAWN]

[18-302. Review and appeal.

~~A. —— **Review by board.** An attorney, judge or provider who is aggrieved by a decision of the board and who is unable to resolve the disagreement informally may petition the board to review the decision. The petition must be in writing and filed with the board within thirty (30) days from the date the decision was mailed to the petitioner. The petition must state briefly the facts supporting the petitioner's claim and may be accompanied by supporting evidence or documentation. The board may, in its discretion, request that the petitioner appear before the board.~~

~~B. —— **Decision.** The board shall review the petition and shall notify the petitioner of its final decision. The decision shall be based on a review of the petition and the records of the board.~~

~~C. —— **Appeal.** An attorney, judge or provider may petition the Supreme Court for modification or reversal of the decision of the board. The petition must be filed with the Court within thirty (30) days after the date of mailing of the final decision by the board and must be accompanied by a certificate of service on the board. Unless otherwise directed by the Court, within thirty (30) days after service of the petition, the board shall file with the Court a response to the petition and shall deliver the record considered by the board in this matter.]~~

[As amended, effective January 1, 1990; as amended by Supreme Court Order No. 05-8300-007, effective January 1, 2006; withdrawn by Supreme Court Order No. _____, effective _____.]

[WITHDRAWN]

[18-303. Reinstatement.]

~~If an attorney whose license to practice law has been suspended pursuant to these rules thereafter files a report with the board showing compliance with the requirements of Rule 18-301, the board shall promptly notify the clerk of the Supreme Court, and recommend reinstatement.]~~

[As amended, effective January 1, 1990; withdrawn by Supreme Court Order No. _____, effective _____.]



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 07/21/2021, 3:11 pm

Supreme Court <mailservices@sks.com>

Wed, Jul 21, 2021 at 3:11 PM

Reply-To: "sfitzpatrick@fitzpatricklawllc.com" <sfitzpatrick@fitzpatricklawllc.com>

To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov, supajf@nmcourts.gov

Your
Name: Sean FitzPatrick

Phone
Number: 5054000420

Email: sfitzpatrick@fitzpatricklawllc.com

Proposal
Number: 2021-028

Comment: This rule is disproportionately burdensome on solo practitioners. In any law firm with multiple attorneys the firm will make sure that the clients of that firm are taken care of. It boils down to what happens when a solo practitioner passes unexpectedly? I propose an exemption. For any solo practitioner, so long as they have a process to notify their professional liability carrier, they can be exempted from this rule. The rule is a good idea, but should not be a requirement to practice law.



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 07/22/2021, 11:31 am

1 message

Supreme Court <mailservices@sks.com>

Thu, Jul 22, 2021 at 11:31 AM

Reply-To: "wdslists@protonmail.com" <wdslists@protonmail.com>

To: supjdm@nmcourts.gov, supjls@nmcourts.gov, supjls@nmcourts.gov, supajf@nmcourts.gov

Your
Name: Daniel Sereduick

Phone
Number: +1 505 506 1066

Email: wdslists@protonmail.com

Proposal
Number: 2021-028

Comment: The proposed revisions to 18-204(F)(2) will make an already onerous self-reporting procedure even worse. Attorneys practicing outside of New Mexico are often limited in the available CLEs that have been pre-approved for NM CLE credits. As a licensed attorney practicing in-house overseas (France), no CLEs will have that approval, and few of the offerings through the NM CLE program are relevant to my legal practice. I will of course take the necessary CLEs to meet my obligations, but taking irrelevant CLEs that seems counter to the spirit of continuing education as a lawyer. It would be more useful to have a coherent, straightforward method for obtaining proper CLE credit for actual education in my field of practice that I actually use when representing my client.

I would also note that the revised rules preserve previously-recorded CLEs as a form of "self-study" (subject to a credit hour limitation). Recorded sessions are not meaningfully different than live sessions without participation, so I would suggest that the rules should be changed to treat previously-recorded CLEs equivalent to live CLEs, especially when the CLE provider records attendance or completion of the session.



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 07/24/2021, 8:54 am

1 message

Supreme Court <mailservices@sks.com>

Sat, Jul 24, 2021 at 8:54 AM

Reply-To: "djbehles@gmail.com" <djbehles@gmail.com>

To: supjdm@nmcourts.gov, supjls@nmcourts.gov, supjls@nmcourts.gov, supajf@nmcourts.gov

Your
Name: Daniel J. Behles

Phone
Number: 505-238-0208

Email: djbehles@gmail.com

Proposal
Number: 2021-028

Comment: My comments relate to the proposed changes to Rule 24-102 - "Annual license renewal requirements".

Under proposed 24-102-C.(2), the annual license renewal requires an attorney to make all of the "annual certifications", which are defined in 24-102-B.(2). The annual certifications include a certification that the attorney has complied with the succession plan requirements of Rule 16-119 NMRA. Rule 16-119 has not yet been implemented by the Court.

The Succession Plan rule was first promulgated in 2018, and I have read the various comments received, which overall indicated that there are significant problems with Rule 16-119 as originally proposed.

Unless or until the Court adopts Rule 16-119, it seems inappropriate to require attorneys to certify that they have complied with the rule. I understand the proposed change only is effective for registrations after October, 2022, but that implies or assumes that a Rule 16-119 will be adopted before then. This seems like putting the cart before the horse. Don't require attorneys to certify compliance with a rule before that rule is in place. If and when a Rule 16-199 is adopted, THEN the court can make certification of compliance with that rule a condition of the annual registration process.



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 07/26/2021, 10:10 am

1 message

Supreme Court <mailservices@sks.com>

Mon, Jul 26, 2021 at 10:10 AM

Reply-To: "ferminrr@comcast.net" <ferminrr@comcast.net>

To: supjdm@nmcourts.gov, supjls@nmcourts.gov, supjls@nmcourts.gov, supajf@nmcourts.gov

Your
Name: Fermin A. Rubio

Phone
Number: 5756421145

Email: ferminrr@comcast.net

Proposal
Number: PROPOSAL 2018-035 Rule, 16-119. Lawyer succession planning

Comment: I, much like Mr. Darden, have my active license but am retired and have no clients. I do not wish to place my law license in an inactive status. I strongly agree that this proposed rule have an exemption as Mr. Darden has outlined.



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 07/29/2021, 8:43 am

1 message

web-admin@nmcourts.gov <mailservices@sks.com>

Thu, Jul 29, 2021 at 8:43 AM

Reply-To: "e_atencio@live.com" <e_atencio@live.com>

To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov, supajf@nmcourts.gov

Your
Name: E. Atencio

Phone
Number: 575-644-2167

Email: e_atencio@live.com

Proposal
Number: 18-201

Comment: The requirement for technological competence should be codified by requiring at least 1 hour per year of technology related CLE. This should include technology related to discovery, e-discovery, client/practice management, or basic office/computer technology.



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 08/13/2021, 7:41 pm

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Thu, Aug 12, 2021 at 7:41 PM

Reply-To: "Charles@Gurdlaw.com" <Charles@gurdlaw.com>

To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov, supajf@nmcourts.gov

Your Name: Charles Gurd
Phone Number: 5059180960
Email: Charles@Gurdlaw.com
Proposal Number: 2021-028
Comment: comment attached
Upload: [Comments-Relating-to-24.102.Succession-Certification.pdf](#)



Comments-Relating-to-24.102.Succession-Certification.pdf

203K

CHARLES B. GURD, ATTORNEY

12231 Academy Road NE
Suite 301, PMB 290
Albuquerque, NM 87111

Ph.: 505.918.0960

EM: Charles@GurdLaw.com

Subj: On July 16, 2021, the N.M. Supreme Court released proposed revisions, most particularly to 24-102 [that includes a new section] of 24-102(B)(2)(c), which states that “succession plan certification [is] required by Rule 16-119 NMRA, [and are] effective for registration statements submitted on or after October 1, 2022.”

I have been on three committees involving succession planning for more than three years and I have practiced law in New Mexico for more than twenty-five years. I am submitting these comments because I oppose the proposed revisions, especially as they relate to Rule 16-119 and the rule governing succession planning certification.

In addition to my general concern that Rule 16-119 has not been published, my specific concerns are:

- If the Designating Attorney works in Northern New Mexico and the Assisting Attorney works in Southern New Mexico (these attorneys may have to be in different geographical areas because of expertise matter, such as patent law, or because of conflicts) what happens if the physical files are lost or delayed in transit? How does the Disciplinary Counsel resolve this problem?
- Why did the Supreme Court not provide for qualified immunity for the “Assisting Attorney” or provide for an automatic stay in the final rules (I know qualified immunity is implied in the Commentary)?
- Requiring all “Designating Attorneys” to certify that they have a succession plan can encourage an “Assisting Attorney” to provide services to clients when that “Assisting Attorney” may not have the capacity to do so because all Designating Attorneys are encouraged to have an “Assisting Attorney.” How does this help clients?
- The requirement in Rule 16-119 that the succession plan must include a “current list of active clients and cases” may be difficult for a law practice to satisfy if those firms have new clients and cases change frequently.

- If a lawyer is an employee of a partnership or a corporation, does that employee have to certify that she or he has a succession plan when the clients are the firm's clients?
- If a senior lawyer is providing Pro Bono legal services working at a non-Bar organization, must that senior lawyer certify that he or she has a succession plan?
- If a senior lawyer is currently only doing work as a Court Appointed Arbitrator does that senior lawyer have to certify that he or she has a succession plan?
- Can an inactive attorney serve as a designating attorney pursuant to **Rule 16-119**?

Respectfully Submitted,

Charles B. Guard



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 08/13/2021, 7:44 pm

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Thu, Aug 12, 2021 at 7:44 PM

Reply-To: "Charles@Gurdlaw.com" <Charles@gurdlaw.com>

To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov, supajf@nmcourts.gov

Your Name: Charles Gurd
Phone Number: 5059180960
Email: Charles@Gurdlaw.com
Proposal Number: 2021-028
Comment: comment attached
Upload: [Comments-Relating-to-24.102.Succession-Certification-1.pdf](#)



Comments-Relating-to-24.102.Succession-Certification-1.pdf

203K

CHARLES B. GURD, ATTORNEY

12231 Academy Road NE
Suite 301, PMB 290
Albuquerque, NM 87111

Ph.: 505.918.0960

EM: Charles@GurdLaw.com

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- Can an inactive attorney serve as a designating attorney pursuant to **Rule 16-119**?

Respectfully Submitted,

Charles B. Guard



**New Mexico
Courts**

Amy Feagans <supajf@nmcourts.gov>

[nmsupremecourtclerk-grp] 2021-028

1 message

charles@gurdlaw.com <charles@gurdlaw.com>

Mon, Aug 16, 2021 at 9:46 AM

Reply-To: charles@gurdlaw.com

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>



Comments Relating to 24.102.Succession Certification.pdf

203K

CHARLES B. GURD, ATTORNEY

12231 Academy Road NE
Suite 301, PMB 290
Albuquerque, NM 87111

Ph.: 505.918.0960

EM: Charles@GurdLaw.com

Subj: On July 16, 2021, the N.M. Supreme Court released proposed revisions, most particularly to 24-102 [that includes a new section] of 24-102(B)(2)(c), which states that “succession plan certification [is] required by Rule 16-119 NMRA, [and are] effective for registration statements submitted on or after October 1, 2022.”

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- If a senior lawyer is currently only doing work as a Court Appointed Arbitrator does that senior lawyer have to certify that he or she has a succession plan?
- Can an inactive attorney serve as a designating attorney pursuant to **Rule 16-119**?

Respectfully Submitted,

Charles B. Guard



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 08/16/2021, 1:44 pm

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Mon, Aug 16, 2021 at 1:44 PM

Reply-To: "elpasomike13@aol.com" <elpasomike13@aol.com>

To: supjdm@nmcourts.gov, supjls@nmcourts.gov, supjls@nmcourts.gov, supajf@nmcourts.gov

Your
Name: Michael T. Milligan

Phone
Number: 915-544-5587

Email: elpasomike13@aol.com

Proposal
Number: 2021-028-Attorney Licensing and MCLE Etc.

Comment: My problem is with the proposed revision to NMRA 24-102, Annual License Renewal Requirements; Non-Compliance; Reinstatement, Subparagraph B(1)(c), which requires a "succession plan certification required by Rule 16-119 NMRA." There currently is no such rule.

All I have seen is a draft proposal, a "one size fits all" model that would require extensive and counterproductive revision of the succession plan I currently have. Furthermore, the all-important feature of what amounts to qualified immunity for the assisting lawyer is not in the rule. It is relegated to the comment section, which is non-binding.

Some members of the Solo and Small Practice Division of the New Mexico Bar have heard rumors that the Court is at least considering adoption of this important rule without the opportunity for public comment. I hope that's not true, because it does not sound legal.

Finally, at the risk of stepping on the toes of persons unknown, I must express my concern about inserting such a controversial matter at page 16 of 23 single spaced proposed new rules. I belong to a tiny minority of the New Mexico Bar which carefully reviews every single proposed rule change. When "consent of the governed" depends on apathy, it is not "consent" at all.

Respectfully yours,
Michael T. Milligan
NM Bar #14998



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 08/16/2021, 3:32 pm

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Mon, Aug 16, 2021 at 3:32 PM

Reply-To: "davidalanstevens@gmail.com" <davidalanstevens@gmail.com>

To: supjdm@nmcourts.gov, supjls@nmcourts.gov, supjls@nmcourts.gov, supajf@nmcourts.gov

Your
Name: David A. Stevens

Phone
Number: 5056709038

Email: davidalanstevens@gmail.com

Proposal
Number: 2021-028

Comment: In 15-302(B)(1), consider making the applicable period "more than one (1) year" rather than "one (1) year or more," so that an attorney inactive for exactly one year does not have to apply to the BBE.



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 08/16/2021, 4:46 pm

1 message

web-admin@nmcourts.gov <nmcourtswbforms@nmcourts.gov>

Mon, Aug 16, 2021 at 4:46 PM

Reply-To: "bgillia@unm.edu" <bgillia@unm.edu>

To: supjdm@nmcourts.gov, supjls@nmcourts.gov, supjls@nmcourts.gov, supajf@nmcourts.gov

Your Name: Beth Gillia, Laura Bassein, and Sue George

Phone Number: 505-277-0710

Email: bgillia@unm.edu

Proposal Number: 2021-028

Comment: We, Beth Gillia, and Laura Bassein, write on behalf of the Institute of Public Law's Judicial Education Center and Corinne Wolfe Center for Child and Family Justice, entities that provide continuing legal education and continuing judicial education programs. Sue George joins these comments on behalf of the University of New Mexico School of Law CLE programs.

Our comments are separated below by rule.

Rule 18-201(C) and 18-203(B)(6) – Ethics and Professionalism:

Regarding legal ethics and professionalism, the term professionalism needs to be clarified. In the past considerable information was available from MCLE in policies regarding what constituted appropriate content for the professionalism category. That more detailed information provided excellent guidance for course providers to determine if a given topic constituted professionalism. The policies no longer provide any information about professionalism, but the term is still used in these rules. Course providers need guidance as to what constitutes professionalism either in these rules or in policy. Without more clarity, it seems that the term professionalism should not be used in the rules.

Rule 18-201(E):

This paragraph addresses domestic violence special commissioners and domestic relations hearing officers, but does not address similarly situated other judicial officers, such as child support hearing officers (40-4B-4), special masters (Rule 10-163), etc. All court based judicial officers should be addressed in this paragraph, rather than picking only some of the types of judicial officers. While this was previously existing language, updating this language now in the context of this larger rule revision effort makes sense.

We suggest that the rule say: "Judges. Judges, retired judges who are members of the state bar on active status, and other judicial officers (including domestic violence commissioners, hearing officers, and special masters) shall complete the same number"

Rule 18-204(F)(1):

The proposed changes to 18-204(F) raise a number of problems and questions.

For-profit course providers may be financially and administratively able to report credits and pay for those credits if attorneys later attend a program as self-study, but this requirement creates an enormous financial and administrative burden for not-for-profit providers, which may be providing programs to specialized audiences without a fee being charged to the individual attendees and without any mechanism for charging such a fee. The burden of reporting and paying should not fall on a not-for-profit entity long after a live program is complete – the original source of funding for that program may no longer exist to pay those fees. Additionally, the course provider cannot attest to the fact that the attorney watched the recording; rather it is generally the attorney who must make that attestation, report credits and pay fees.

We would recommend that this language be revised to say: "An attorney may self-report credits for all courses."

This approach eliminates the burden on the provider of reporting credits long after a program was initially offered without increasing the burden to the Board (as the processing of an individual's credits will be the same regardless of who reports credits from a pre-approved course.)

Rule 18-204(G):

Although in need of updating, this paragraph provides a critical foundation for the delivery of judicial education in New Mexico and should not be deleted. The Judicial Education Center offers to participate in the review and possible amendment of this and other judicial education rules; however, it is vital that this rule not be withdrawn without simultaneously providing well considered replacement language with the involvement of the Judicial Education Center. The removal of this paragraph is even more troubling in light of the fact that Appendix A was also recently withdrawn without consultation with the Judicial Education Center, as that Appendix, while also in need of updating, provided an important foundation for judicial education in New Mexico.

Rule 18-204(G)(1):

This subparagraph should not be deleted. It is critical that it be recognized that judicial education programs attended by judges and other judicial officers qualify to satisfy those attorneys' CLE requirements. Judicial education is not always the same as legal education. This rule makes it clear that judicial education programs will satisfy CLE requirements for judges and other judicial officers.

Rule 18-204(G)(2):

This paragraph provides for extremely vital training on domestic violence for judges and other judicial officers. Deletion of this subparagraph eliminates that critical required training. This subparagraph, as well as the rest of this paragraph, provide the underpinnings for judicial education policies also related to domestic violence training for judges and other judicial officers.

We strongly advocate that subparagraph G be retained in its entirety until it can be appropriately considered by a committee focused on judicial education rules. We do not believe that this language in any way impairs the ability of the remainder of this rulemaking effort to move forward. And, it is critical that this judicial education rule not be eliminated. The only acceptable change to the paragraph G language would be a parallel change to that noted about the types of judicial officers listed in Rule 18-201(E).

Rule 18-103: Like Rule 18-204(G), this rule should not be withdrawn without simultaneously adopting a replacement rule. While this exact committee structure does not currently exist, there are two judicial education committees that do exist and, while in need of updating, this rule sets the stage of recognition of judicial education as an important separate, but related, form of continuing education that should be recognized as providing CLE credits for judges and other judicial officers.



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 08/16/2021, 5:16 pm

1 message

web-admin@nmcourts.gov <nmcourtswbforms@nmcourts.gov>

Mon, Aug 16, 2021 at 5:16 PM

Reply-To: "jrose@jbr-law.com" <jrose@jbr-law.com>

To: supjdm@nmcourts.gov, supjls@nmcourts.gov, supjls@nmcourts.gov, supajf@nmcourts.gov

Your Name: Julia B. Rose
Phone Number: (505)983-0003
Email: jrose@jbr-law.com
Proposal Number: 2021-028

Comment: I have been practicing law for almost 40 years. For the majority of my career, I have been a solo practitioner. I certainly acknowledge the need to address succession issues upon the death or demonstrated disability of an attorney, but I have a number of concerns about the proposed rule. I offer the following comments with the hope that they will be helpful in some way.

1. I agree strongly with the comments submitted by the Solo and Small Firm Section's Subcommittee on Succession Planning and by Charles Gurd.
2. Lawyers have been become disabled and have died while engaged in practice for as long as there have been lawyers and clients. Under most circumstances this has worked out without the need for the imposition of burdensome rules and regulations. The proposed rule may place a heavy burden upon an assisting lawyer, which burden may be outside the scope of the assisting attorney's professional liability insurance coverage. I would be very hesitant to agree to serve as an assisting attorney under the proposed rule.
3. I suspect that many designating attorneys will only include the minimum required elements of a succession plan in their individual plans. If only the minimum required elements are included, it seems unlikely that the rule will achieve its intended purpose. In addition, if only the minimum required elements are mandated, then that information could simply be gathered by the Supreme Court without the need to designate, and burden, an assisting attorney.
4. In the absence of more specific language in the rule, succession plans will differ widely from lawyer to lawyer, making it very difficult for professional liability insurers to gain an adequate comfort level to provide liability insurance coverage to assisting lawyers for the services rendered to designating lawyers or their estates. Designating attorneys, or their estates, may not be considered "clients" under the terms of most professional liability insurance policies unless a succession plan expressly identifies the designating attorney or their estate as a client.
5. I feel that problematic situations arising upon the death or demonstrated disability of an attorney should be handled by the appointment of successor counsel by the Supreme Court under the cloak of immunity similar to that involved in the appointment of a receiver or special master. Should the need arise, the Supreme Court could select and appoint a willing successor attorney and define the duties of the successor attorney under a standardized form of order that would include immunity and a stay or other extension of statutes of limitations and other filing deadlines.
6. There is the potential for conflicts between the rights and duties of a court appointed conservator or guardian or an attorney in fact or a personal representative and an assisting attorney. For example, who has the right to control the dead or disabled attorney's office and operating account?