

1 **16-119. Lawyer succession planning.**

2           A.     **Succession plan.** Every lawyer practicing law in the state of New Mexico  
3 (the “designating lawyer”) must have a written succession plan, either alone or as part of a  
4 law firm plan, specifying the steps to be taken in the event of the designating lawyer’s  
5 extended incapacity from practicing law, or the designating lawyer’s disability or death. At  
6 a minimum, the plan must include the following:

7                   (1)     the identity of the lawyer or law firm designated to carry out the  
8 terms of the succession plan (the “assisting lawyer”);

9                   (2)     the location of information necessary to access the designating  
10 lawyer’s current list of active clients, client files, and other client information including  
11 computer and other relevant passwords; and

12                   (3)     information on the designating lawyer’s trust and operating  
13 accounts and corresponding records.

14           B.     **Notice of plan.** The designating lawyer must notify the assisting lawyer of,  
15 and the assisting lawyer must consent to, the designation as an assisting lawyer in a writing  
16 signed by the designating lawyer and the assisting lawyer, or by electronic communication  
17 acknowledged by both the designating lawyer and the assisting lawyer. Lawyers must also  
18 notify their clients of the existence of the succession plan.

19           C.     **Certificate of compliance.** Every lawyer shall annually certify to the State

**RULES OF PROFESSIONAL CONDUCT**  
**Rule 16-119**  
**[NEW MATERIAL]**

**Supreme Court Approved**  
**November 1, 2021**

1 Bar of New Mexico, as part of the registration statement filed under Rule 24-102.1  
2 NMRA, that the lawyer or the law firm employing the lawyer is in compliance with this  
3 rule. In the case of a single lawyer or a law firm employing only a single lawyer, the lawyer  
4 shall include on the registration statement the name or names of the assisting lawyer. In  
5 the case of lawyers or law firms employing more than one lawyer, each lawyer shall  
6 identify on the registration statement the person or persons responsible for the law firm's  
7 succession plan. The State Bar shall retain the original of each registration statement and,  
8 upon request, shall provide a copy to the disciplinary board.

9 [Adopted by Supreme Court Order No. 21-8300-027, effective for registration statements  
10 submitted under Rule 24-102.1 NMRA on or after October 1, 2022.]

11 **Committee commentary.** —

12 **General Principles**

13 [1] When a lawyer is unexpectedly unable to practice for an extended period of  
14 time, the lawyer's clients, staff, and practice are at risk of significant harm. By taking  
15 proactive steps to plan for an unexpected interruption in practice, including  
16 implementation of a succession plan, a designating lawyer can avert or mitigate such harm.  
17 The goal of succession planning is to protect the interests of the designating lawyer's  
18 current clients by creating and implementing a succession plan to take effect when the  
19 designating lawyer is unable to practice law due to extended incapacity, or the lawyer's

1 disability or death. The incapacity of the designating lawyer may be temporary or  
2 permanent.

3 [2] The level of sophistication of a succession plan should be determined by  
4 each designating lawyer's or law firm's circumstance. For example, as part of the  
5 succession plan the designating lawyer can arrange for the assisting lawyer to take steps to  
6 promptly distribute the client matters, including any trust funds due to the clients, directly  
7 to the clients or to other lawyers chosen by the clients. Alternatively, the designating  
8 lawyer may draft the plan such that, with the clients' consent, the assisting lawyer will  
9 assume responsibility for the interests of the designating lawyer's clients, subject to the  
10 right of the clients to retain a different lawyer or law firm other than the assisting lawyer.  
11 Some designating lawyers may choose to designate more than one lawyer or a pool of  
12 lawyers as the assisting lawyer. These examples are not meant to be exhaustive or  
13 exclusive, but rather to suggest that there is great flexibility allowed by the rule in the  
14 crafting of the succession plan.

15 **Determining Incapacity**

16 [3] Incapacity or disability may be determined in many ways, including the  
17 following: (1) by a court with competent jurisdiction; (2) as defined in the succession plan;  
18 (3) as certified by a competent medical professional; or (4) as otherwise agreed between  
19 the designating lawyer and the assisting lawyer.

1 **Role of Assisting Lawyer**

2 [4] Upon reasonable confirmation of the designating lawyer's extended  
3 incapacity, disability, or death, the assisting lawyer should take those steps provided for in  
4 the succession plan. If the assisting lawyer forms an attorney-client relationship with the  
5 designating lawyer's clients, the assisting lawyer will be subject to the existing rules and  
6 duties attendant to the attorney-client relationship. Otherwise, this rule is not intended to  
7 create liability between the assisting lawyer and either the clients of the designating lawyer  
8 or the designating lawyer, absent intentional, willful, or grossly negligent breach of duties  
9 by the assisting lawyer.

10 **Notice to Clients**

11 [5] The designating lawyer must notify his or her clients of the existence of the  
12 lawyer's succession plan. Preferably this should be done by including the information in  
13 the retainer agreement. The designating lawyer should also inform clients that in the event  
14 the client learns of the lawyer's extended incapacity, disability, or death, the client may call  
15 the State Bar of New Mexico for further information.

16 **Fees**

17 [6] Attorneys' fees, if any, to be paid to the assisting lawyer shall be in  
18 accordance with Rules 16-105, 16-115, and 16-504 NMRA.

19 **Other Resources**

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1           [7]     Numerous resources are available to assist a designating lawyer in engaging  
2 in effective succession planning, including those materials available on the State Bar of  
3 New Mexico’s website under the tab “for Members: Supreme Court Commissions:  
4 Succession and Transition Committee.” All lawyers are encouraged to avail themselves of  
5 these materials.

6 [Adopted by Supreme Court Order No. 21-8300-029, effective for registration statements  
7 submitted under Rule 24-102.1 NMRA on or after October 1, 2022.]