

**PROPOSED REVISIONS TO THE RULES OF PROFESSIONAL CONDUCT AND THE
RULES GOVERNING THE NEW MEXICO BAR**

PROPOSAL 2022-005

March 7, 2022

The Code of Professional Conduct Committee has recommended amendments to Rules 16-505 and 24-106 NMRA for the Supreme Court's consideration.

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

Sally A. Paez, Deputy Clerk of Court
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 April 6, 2022, 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.

16-505. Unauthorized practice of law; multijurisdictional practice of law.

A. A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.

B. A lawyer shall not employ or continue the employment of a disbarred or suspended lawyer as an attorney.

C. A lawyer shall not employ or continue the employment of a disbarred or suspended lawyer as a law clerk, a paralegal, or in any other position of a quasi-legal nature if the suspended or disbarred lawyer has been specifically prohibited from accepting or continuing ~~such~~ that employment by order of the Supreme Court or the disciplinary board.

D. A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by the Rules of Professional Conduct or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

E. A lawyer ~~admitted~~ authorized to practice law in another United States jurisdiction or before the highest court of record in any country, and not disbarred or suspended from practice

in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that in compliance with Rule 24-106 NMRA

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter; and

(2) are in or reasonably related to a pending or potential proceeding before a court, legislative body, administrative agency, or other tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in ~~[such]~~that proceeding or reasonably expects to be so authorized.

F. A lawyer ~~[admitted]~~ authorized to practice law in another United States jurisdiction or before the highest court of record in any country, and not disbarred or suspended from practice in any jurisdiction may provide legal services in this jurisdiction that without Rule 24-106 NMRA compliance

(1) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(2) arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. In transactions involving issues specific to New Mexico law, the lawyer shall associate counsel admitted to practice in this jurisdiction;

(3) are provided to the lawyer's employer or its organizational affiliates as in-house counsel subject to any registration requirements and are not services for which the forum requires pro hac vice admission; or

(4) are services that the lawyer is authorized by federal or other law to provide in this jurisdiction.

[As amended, effective September 1, 1987; September 1, 2003; as amended by Supreme Court Order No. 13-8300-040, effective December 31, 2013; as amended by Supreme Court Order No. _____, effective _____.]

24-106. Practice by nonadmitted lawyers.

A. **Conditions of appearance.** ~~[Upon]~~On compliance with the requirements of this rule, but only in association with an active member in good standing as a member of the State Bar of New Mexico, an attorney authorized to practice law in another United States jurisdiction or before the highest court of record in any [state or] country ("nonadmitted attorney") may perform legal services on behalf of a client or a party, even though the attorney is not licensed to practice law in this state unless otherwise excepted under Rule 16-505(F) NMRA. A ~~[non-admitted]~~ nonadmitted attorney shall comply separately for each action, suit, proceeding, or transactional matter in which the attorney plans to perform legal services with the limitation that the ~~[non-admitted]~~ nonadmitted attorney may not register more than five (5) times in any given calendar year.

B. **Registration certificate.** For each action, suit, proceeding, or transactional matter in which the attorney intends to appear, the nonadmitted attorney shall file a registration certificate with the State Bar of New Mexico. Information related to the ~~[non-admitted]~~ nonadmitted attorney's registration under this rule is publicly available. The attorney shall identify the proceeding in which the attorney intends to appear and the local counsel with whom the attorney is associating, and shall certify that

(1) the attorney is admitted or licensed as an attorney in good standing in another United States jurisdiction or before the highest court of record in any [state or] country and shall submit a certificate of good standing from every [state or country] jurisdiction in which the attorney is admitted or licensed;

(2) the attorney has not been disciplined, suspended, or disbarred in any jurisdiction;

(3) the attorney has not had a pro hac vice admission revoked in any jurisdiction;

(4) the attorney will comply with applicable statutes, laws, and procedural rules of the state of New Mexico; and

(5) the attorney will comply with the Rules of Professional Conduct, the Rules Governing Discipline, the Rules Governing the New Mexico Bar, and the rules governing civil, criminal, and appellate procedure approved by the Supreme Court, and will submit to the jurisdiction of the New Mexico courts and the Disciplinary Board with respect to acts and omissions occurring during the attorney's admission under this rule and with respect to the requirements of Rules 1-089.1, 2-107, 3-107, 5-108, 12-302, 16-104(C) and 24-106 NMRA;

C. Process following disclosure of discipline.

(1) If the attorney has been disciplined, suspended, disbarred, or had a pro hac vice admission revoked in any jurisdiction, the attorney shall submit the details of the same to the Disciplinary Board for investigation and recommendation to the court in which the attorney seeks to practice pro hac vice.

(2) During the pendency of the pro hac vice application or admission, should the attorney's status in any jurisdiction change the attorney shall immediately notify the court in which the attorney is practicing pro hac vice, the State Bar of New Mexico, and the Disciplinary Board for further action.

D. Payment of fee. With the first registration certificate in any given calendar year, the nonadmitted attorney shall pay a non-refundable fee of four hundred fifty dollars (\$450) to the State Bar of New Mexico. For each subsequent registration certificate in a given calendar year, the nonadmitted attorney shall pay a fee of two hundred seventy-five dollars (\$275). The fee shall be waived if

(1) the nonadmitted attorney certifies that the attorney is employed by a governmental authority and will be performing legal services on behalf of a governmental authority in the proceeding for which the attorney is registering;

(2) the attorney is employed by an agency providing legal services to indigent clients and will be performing legal services on behalf of an indigent client in the proceeding for which the attorney is registering; or

(3) the attorney will otherwise be performing legal services on behalf of an indigent client in a proceeding for which the attorney is registering and will be charging no fee for the services.

E. Use of fees. From the first fee collected in a given calendar year, the State Bar of New Mexico shall pay an amount equal to the annual disciplinary fee assessment under Rule 17-203(A) NMRA to the Disciplinary Board and an amount equal to the annual client protection assessment pursuant to Rule 17A-003 NMRA to the Client Protection Fund. From each fee collected under this rule, the State Bar of New Mexico may deduct an administrative and processing charge of not more than twenty-five dollars (\$25). The balance of all such fees shall be

held by the State Bar of New Mexico in a special fund to support the delivery of civil legal services to the poor. The Board of Bar Commissioners shall distribute all fees held in the special fund at least annually to nonprofit organizations providing or supporting the provision of civil legal services to the poor as recommended by the New Mexico Commission on Access to Justice and approved by the Supreme Court.

[Approved, effective January 20, 2005; as amended by Supreme Court Order No. 13-8300-040, effective for all pro hac vice registration certificates filed on or after December 31, 2013; as amended by Supreme Court Order No. _____, effective _____.]