

**PROPOSED REVISIONS TO THE RULES GOVERNING THE NEW MEXICO BAR  
PROPOSAL 2022-003**

**March 7, 2022**

The State Bar of New Mexico has recommended new Rule 24-112 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed new rule 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](mailto: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.

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**24-112. Professional practice program.**

A. **Purpose and content.** In order to support best practices and promote compliance with professional obligations by lawyers admitted to practice law in the State of New Mexico, the New Mexico Supreme Court authorizes the State Bar of New Mexico to create a professional practice program (the "Program"). In the discretion of the State Bar, the Program may include but not be limited to:

1. lawyer self-assessments, paper and online;
2. sample forms and checklists;
3. "how-to" manuals and education courses;
4. business/life coaching;
5. practice management assessments and consultations;
6. best practices education courses;
7. ethics advisory services; and
8. other programs and resources as may be, from time to time, determined by

the State Bar.

B. **Confidential information.** The New Mexico Supreme Court finds that good cause exists to maintain the confidentiality of information and documents (a) obtained by the Program from, or provided to the Program by, an attorney, law firm, or their agent; (b) prepared, created, or communicated by the Program to a lawyer, law firm, or their agent; or (c) gathered or created by the Program for purposes of assessing and/or consulting with a lawyer or law firm (collectively

the foregoing is referred to as “Confidential Information”). Confidential Information shall remain confidential unless (a) the lawyer or law firm who provided the information or documents consents to its disclosure; or (b) disclosure is necessary to prevent a law firm, lawyer or other person from committing a crime or a fraudulent act. Moreover, Confidential Information shall not be used nor admitted into evidence in any disciplinary or disability complaint, investigation, or proceeding, nor in any civil matter.

C. **Anonymized self-assessments.** Among other things, the Program is authorized to provide to lawyers, in paper form as well as online, self-assessment surveys. Those surveys may generate personalized individual reports for use by the lawyer who takes the assessment. In all cases, the Program shall not collect any personally-attributable answer data or copies of the personalized, individual reports from lawyers who complete a self-assessment absent consent of the lawyer. Self-assessments taken by lawyers and reports generated from the assessments are considered Confidential Information as provided in Paragraph B of this rule and are subject to the terms of that paragraph. The Program may gather anonymized statistical data from lawyer self-assessments and reports for use by the Program in developing educational programs and other resources for members of the practicing bar.

D. **Ethics advisory service.** Among other things, the Program is authorized to offer ethics advice to lawyers in response to specific inquiries from lawyers to the Program. Any information or opinion offered or provided during the course of an ethics inquiry is the informal, individual view of Program personnel. No information relating to an ethics inquiry, including the fact that an inquiry has been made, its content, or the response, may be asserted in response to any grievance or complaint under the applicable disciplinary rules or otherwise, nor is that information admissible in any proceeding under the applicable disciplinary rules nor in any civil matter. The Program shall not make or maintain any permanent record of the identity of a lawyer seeking ethics advice but may keep records of the number of inquiries, the nature and type of inquiries, and responses. Those records shall be used solely to aid the Program in developing educational programs and resources for members of the bar. The information shared in the context of an ethics inquiry and response, and any records maintained by the Program pertaining to ethics inquiries, are considered Confidential Information as set forth in Paragraph B of this rule, and are subject to the terms of that paragraph. Moreover, the provisions of Rule 16-803(A) NMRA do not apply to information received by the Program from a lawyer in the course of an ethics inquiry by the lawyer.

E. **No attorney-client relationship.** No lawyer or any other employee or agent of the State Bar of New Mexico or the New Mexico State Bar foundation who provides any services, information, documents, or advice under the Program shall be considered or deemed to have an attorney-client relationship with any lawyer, law firm, or agent of a lawyer or law firm, who uses any services of, forms of, documents of, information from, or communications or other materials provided to or from the Program.

F. **Immunity and testimony.** Members of the Board of Bar Commissioners, members of the New Mexico State Bar Foundation, employees of the State Bar of New Mexico, employees of the New Mexico State Bar Foundation, and any persons acting at the direction of, for the benefit of, or on behalf of the Program shall be immune from suit for all conduct in the course of their official duties, provided the persons acted in good faith. The burden of proving bad faith shall be on the person asserting it. Additionally, no member of the Board of Bar Commissioners or the State Bar Foundation nor any employee of the State Bar of New Mexico or the New Mexico State Bar Foundation shall be subject to a subpoena or otherwise compelled to testify in any proceeding,

including a disciplinary proceeding or a civil action, about any matter undertaken in that person's official capacity in connection with the Program.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]



New Mexico  
Courts

Amy Feagans <supajf@nmcourts.gov>

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## Rule Proposal Comment Form, 04/05/2022, 12:51 pm

1 message

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

Tue, Apr 5, 2022 at 12:51 PM

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

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

Your  
Name: Charles  
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Proposal  
Number: 2022-003

Comment: I have not seen any evidence provided by the State Bar that this program is necessary or even appropriate. Given that the New Mexico Supreme Court is requiring mandatory succession, which can be burdensome to actually implement, adding a new layer, is remarkable. Maybe it is time to retire from the practice of law in New Mexico.