

**PROPOSED REVISIONS TO THE RULES GOVERNING DISCIPLINE
PROPOSAL 2020-003**

March 3, 2020

The Disciplinary Board has recommended amendments to Rule 17-212 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:

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 April 2, 2020, 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.

17-212. Resigned, disbarred or suspended attorneys.

A. **Notification of clients in pending matters.** An attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or suspended pursuant to the Rules Governing Discipline shall promptly notify by registered or certified mail, return receipt requested, in a form prescribed or approved by disciplinary counsel, all clients being represented by the attorney in pending matters, other than litigated or administrative matters or proceedings pending in any court or agency, of the resignation, disbarment or suspension and consequent inability to act as an attorney after the effective date of the resignation, disbarment or suspension, and shall inform the clients to seek legal advice elsewhere. If accepted by the Supreme Court, an attorney who enters into a conditional agreement pursuant to Rule 17-211 NMRA that results in the attorney's resignation, suspension or disbarment shall provide the notice required herein to all clients whom the attorney represented as of the date that the conditional agreement was signed by the attorney. In any matter not involving a conditional agreement but in which the order of the Supreme Court suspending or disbaring an attorney delays the effective date of the resignation, suspension or disbarment, the attorney shall provide the notice required to all clients whom the attorney represented as of the date that the Court entered its order, regardless of the subsequent date that the suspension or disbarment takes effect. In all cases, the attorney shall also provide to each of the attorney's clients a copy of the order accepting or providing for the attorney's resignation or disbarment or suspending the attorney. An attorney who has resigned, been disbarred or suspended from the practice of law, or who has signed a conditional agreement providing for the attorney's resignation, suspension or disbarment, may not recommend to the attorney's clients any other

lawyer to represent them but shall inform the client that the client may contact the State Bar of New Mexico for one of its lawyer referral programs.

B. Notification in litigated matters. An attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or suspended pursuant to the Rules Governing Discipline shall promptly give notice of disbarment, suspension or resignation in a form prescribed or approved by the Disciplinary Board by registered or certified mail, return receipt requested: to each of his clients who is involved in litigated matters or administrative proceedings; to the attorney for each adverse party in such matter or proceeding or, if an adverse party is proceeding pro se, to the pro se adverse party; and to the court or administrative agency in which the matter is pending. The notice of disbarment, suspension or resignation shall set forth the effective date of the attorney's resignation, disbarment or suspension. The notice to be given to the client shall inform the client that he should seek the legal advice of another attorney or attorneys in his place. If accepted by the Supreme Court, an attorney who enters into a conditional agreement pursuant to Rule 17-211 NMRA which results in the attorney's resignation, suspension or disbarment shall provide the notice required herein to all clients and all opposing counsel and pro se parties, courts and administrative agencies in all litigated or administrative matters pending on the date that the conditional agreement was signed by the attorney. In any matter not involving a conditional agreement but in which the order of the Supreme Court suspending or disbaring an attorney delays the effective date of the resignation, suspension or disbarment, the attorney shall provide the notice required to all clients and all opposing counsel and pro se parties, courts and administrative agencies in all litigated or administrative matters pending, on the date that the Court entered its order, regardless of the subsequent date that the suspension or disbarment takes effect. In all cases, the attorney shall also provide to each of the attorney's clients, to every opposing counsel and pro se party and to every court or administrative agency in each litigated or administrative matter a copy of the order accepting or providing for the attorney's resignation or disbaring or suspending the attorney. An attorney who has resigned, been disbarred or suspended from the practice of law, or who has signed a conditional agreement providing for the attorney's resignation, suspension or disbarment, may not recommend to the attorney's clients any other lawyer to represent them. In the event the client does not obtain substitute counsel before the effective date of the resignation, disbarment or suspension, it shall be the responsibility of the attorney to advise in writing the court or agency in which the proceeding is pending, of the attorney's automatic withdrawal from participating further in the proceeding. The notice to be given to the attorney for an adverse party or to any pro se party shall state the place of residence of the client of the attorney.

C. Unauthorized practice of law. An attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or is suspended pursuant to these rules, shall not accept any new retainer or engage as attorney for another in any case or legal matter of any nature. Further, an attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or is suspended pursuant to these rules shall not act as a non-attorney representative for another in any state, county, city or local public body administrative or personnel proceeding or matter of any kind unless specifically authorized by the Supreme Court and then only upon such terms and conditions as the Court deems appropriate. Subject to the approval of the Supreme Court, until the effective date of the resignation, suspension or disbarment, the attorney may on behalf of any client act on such matters that were pending on the date of the agreement or order.

D. Affidavit of compliance. Within ten (10) days after the effective date of the resignation, disbarment or suspension order, the attorney shall file with the Supreme Court an affidavit showing:

(1) the attorney has fully complied with the provisions of the order and with this rule; and

(2) the attorney has served a copy of such affidavit upon disciplinary counsel.

The attorney shall file with the affidavit copies of the letters required to be sent pursuant to Paragraphs A and B of this rule. Such affidavit shall also set forth the residential or other address where communications may thereafter be directed to the attorney. In order that the attorney can be located in the event complaints are made about the attorney's conduct while the attorney was engaged in practice, for a period of five (5) years following the effective date of the resignation, disbarment or suspension order, the attorney shall continue to file a registration statement in accordance with Rule 17-202 NMRA, listing the residence or other address where communications may thereafter be directed to the attorney.

E. **Required records.** An attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or suspended shall keep and maintain records of the various steps taken by the attorney under this rule so that upon any subsequent proceeding instituted by or against the attorney, proof of compliance with these rules and with the disbarment or suspension order will be available.

F. **Contempt.** Any attorney who fails or refuses to comply with the provisions of this rule may be held in contempt of the Supreme Court.

[As amended by Supreme Court Order No. 12-8300-008, effective April 5, 2012; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015; as amended by Supreme Court Order No. _____, effective _____.]