

**PROPOSED REVISIONS TO THE RULES GOVERNING DISCIPLINE
PROPOSAL 2020-005**

March 3, 2020

The Disciplinary Board has recommended amendments to Rule 17-313 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.

17-313. Hearings.

A. **Time for commencement.** Within forty-five (45) days after the service of the specification of charges, the chair of the hearing committee shall set a time and date for a formal hearing on the charges. The formal hearing shall be set no later than one hundred and fifty (150) days from the date of the service of the specification of charges. With respect to a hearing held following the rejection of a conditional agreement as provided for in Rule 17-211 NMRA, such hearing shall be set no later than ninety (90) days following the rejection of the conditional agreement. Upon motion and a showing of good cause, the chair of the Disciplinary Board may extend the time for the commencement of the hearing. The deadlines set forth in this rule to set and hold the hearing are not jurisdictional and any failure to hold a hearing within the specified time period does not otherwise divest the hearing committee, the Board, or the Court of jurisdiction to hold the hearing, and to consider and rule upon the charges against the respondent.

B. **Notice of hearings.** The chair of the hearing committee shall give prompt written notice of the time and place of the hearings to the parties.

C. **Record of proceedings.** The chair of the hearing committee shall arrange for the taking of a record of all evidence received during the course of the hearing. The expense for the transcript of proceedings shall be paid for by the Disciplinary Board, but may be assessed against the respondent-attorney in accordance with Rule 17-106(B) NMRA. The record in all disciplinary hearings may be taken on an audio recording device approved by the administrative office of the courts or the chair of the hearing committee shall arrange for a stenographic record of the proceedings to be prepared. The committee shall cause a copy of the record to be filed with the

Disciplinary Board, together with the hearing committee's file of all pleadings and other material submitted to it and all exhibits. The record of the hearing shall comply with the Rules Governing the Recording of Judicial Proceedings.

D. **Procedure of hearings.** Formal hearings will proceed in the following manner:

(1) formal hearings will be adversary in nature, prosecuted by disciplinary counsel, and determined by a majority vote of the hearing committee. The chair of the Disciplinary Board or, in emergencies, the vice chair of the Disciplinary Board, may designate members of another committee to substitute for any absent or disqualified member, if necessary;

(2) all witnesses shall be sworn;

(3) disciplinary counsel shall present evidence in support of all allegations in the specification of charges, followed by the respondent's evidence;

(4) the committee chair shall preside and shall make rulings upon questions of admissibility of evidence and conduct of proceedings;

(5) all committee members may ask questions of any witness, including the respondent-attorney, at any stage of the proceedings;

(6) hearings may be adjourned from time to time at the discretion of the chair of the hearing committee;

(7) the complaining witness or witnesses, the respondent-attorney, and disciplinary counsel may be present throughout the formal hearing. Other witnesses may be excluded, except when testifying, at the discretion of the chair of the committee; and

(8) within fourteen (14) days after the court reporter notifies the parties that the transcript of the hearing is complete or within a time period otherwise agreed to by the parties and the committee, both parties shall have the right to submit proposed findings and conclusions after which the hearing committee shall consider the case and shall, within thirty (30) days after the requested findings and conclusions are submitted, prepare, sign, and transmit to the Disciplinary Board its findings of fact, conclusions, and recommendations for discipline or other disposition of the matter. Upon the request of the chair of the hearing committee and upon a showing of good cause, the chair of the Disciplinary Board may extend the time for preparation and transmission to the Disciplinary Board of the committee's findings of fact, conclusions, and recommendations, which request may be made before or after the thirty (30) days, but such extension shall not exceed an additional sixty (60) days without a further showing of good cause. Regardless, the deadline for the hearing committee to submit its findings of fact, conclusions of law, and recommendations for discipline or other disposition is not jurisdictional and any failure by the hearing committee to submit its findings, conclusions, and recommendations in the specified time period does not otherwise divest the hearing committee, the Board, or the Supreme Court of jurisdiction to consider and rule upon the charges against the respondent.

E. **Notice of findings, conclusions and recommendations.** Upon the filing in the chair's office of the record of the formal hearing and the findings of fact, conclusions, and recommendations of any hearing committee, the chair of the Disciplinary Board shall give written notice of the filing date thereof with copies of the findings, conclusions, and recommendations to chief disciplinary counsel, prosecuting disciplinary counsel, the respondent, and counsel for the respondent. The respondent may request a copy of the record of proceedings directly from the court reporter and at the respondent's own expense, or may request a pdf or similarly formatted copy of the transcript from the Disciplinary Board. At the same time, the chair shall advise the parties that they have ten (10) days from the date of mailing of the findings, conclusions, and recommendations to request oral argument or permission to submit briefs before the Disciplinary

Board if they wish to do so, and shall advise them of the names of the members of the panel of the Board that will be designated to consider the matter. Requests for oral argument and requests for permission to file briefs shall be deemed to be filed when mailed.

F. **Record defined.** As used in these rules, "record" means

(1) a tape that was recorded by an audio recording device approved by the administrative office of the courts for use in the district courts of this state. Where the transcript of the proceedings is a tape, the chair of the hearing committee shall cause an index log to be prepared for the tape. The tapes shall not be transcribed for purposes of an appeal;

(2) statement of facts and proceedings stipulated to by the parties for purposes of review; or

(3) stenographic notes that must be transcribed when a "record" is required to be filed.

[As amended, effective January 1, 1986; August 1, 1988; as amended by Supreme Court Order No. 08-8300-001, effective January 16, 2008; 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. 18-8300-009, effective December 31, 2018; as amended by Supreme Court Order No. _____, effective _____.]