

**NEW MEXICO FORMAL REPRIMANDS
AND JUDICIAL NOTICES FOR
PROFESSIONAL RESPONSIBILITY**

Introduction to Reprimand Project

The Code of Professional Responsibility

The Code of Professional Responsibility was promulgated by the house of delegates of the American Bar Association on August 12, 1969, and amended February 24th, 1970.

On February 24th, 1971 the New Mexico Supreme Court adopted the Code of Professional Responsibility as the rules of conduct for the New Mexico bar. Cite:

NMSA Rules 2002 p606

The Rules of Professional Conduct

On June 26th, 1986, the New Mexico Supreme Court ordered that the **old** Code of Professional Responsibility would be withdrawn and a **new** Code of Professional Responsibility would take effect January 1st, 1987.

Cite: NMSA Rules 2002 p609

16-101: Competence.

Lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Costa, Maria R.

See rules 16-103, 16-104(A), 16-302, 16-303(A)(1), 16-304(C), 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 08-98-353

Reprimand Issued: August 17, 2001

Conduct resulting in rule violation:

- 1) Failure on two consecutive occasions to file responses to motions by opposing counsel or attend the hearings on those motions, including a hearing on a motion to dismiss.
- 2) Failure to respond to opposing counsel's requests for discovery, despite being compelled by order of the court to do so.
- 3) Failure to attend hearings and refusal through neglect to comply with court's discovery order caused her client's cause of action to be dismissed.

Schoepner, John J.

See rules 16-103, 16-104, 16-105(C), 16-108(E), 16-116(D), 16-302, 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 02-99-370

NMBBULL Vol. 39, No. 49, Dec 7, 2000

Conduct resulting in rule violation:

- 1) Failure to name proper defendants in client's claim due to failure to properly research case and law surrounding case
- 2) Failure to take action furthering claim resulting in dismissal for lack of prosecution and later causing the statute of limitations to be missed
- 3) Failure to be prepared for trial of a public defender client who was being held in custody, causing client to remain in custody for several additional months
- 4) Failure to meet or speak with public defender client prior to trial, confusion regarding whether client was a fugitive or being held in custody

Cordova, Camille

See rules 16-103, 16-104(A), 16-105(A), 16-116(D), 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 12-95-292

NMBBULL Vol. 37, No. 36, Sept 3, 1998

Conduct resulting in rule violation:

- 1) Failure to obtain timely appointment for client in Court Clinic
- 2) Failure to inform and provide a copy of Temporary Domestic Order to client at the time that the order was issued.
- 3) Failure to provide client with new address and telephone number when lawyer moved her office, making it very difficult for client to contact her.
- 4) Failure to adequately communicate on client's behalf with judge and opposing counsel

Reif, Kurt

See rules 16-103, 16-104

Disciplinary No. 12-95-291

NMBBULL Vol. 36, No. 46, Nov. 13, 1997

Conduct resulting in rule violation:

- 1) Filed a lien that could only attach to real property against personal property that was loaded on a railway car
- 2) Failure to advise client that additional paperwork was needed in a real estate transaction
- 3) Requested relief that did not exist in bankruptcy action
- 4) Filed a pleading that bore no plausible relationship to a proof of claim
- 5) Failure, in six different cases, to comply with appellate procedural rules
- 6) Without client's consent and without verifying information with client, filed motion seeking to have the public defender represent client; the motion contained inaccurate information indicating that the client was indigent when this was not the case
- 7) Failure to examine crucial piece of evidence in criminal case, later causing new trial to be granted on the basis of ineffective assistance of counsel

Carver, Joanne M.

See rules 16-103, 16-104

No disciplinary number given

NMBBULL Vol. 34, No. 50, Dec. 14, 1995

Conduct resulting in rule violation:

1) Failure, on three occasions, to provide timely notice to clients of upcoming hearings in domestic relations cases.

Traub, Rosemary

See rules 16-103, 16-108(E), 16-116(A), 16-302, 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 02-93-228

NMBBULL Vol. 34, No. 35, Aug 31, 1995

Conduct resulting in rule violation:

- 1) Misrepresented to client that actions had been taken in divorce case when nothing had been done. For example, misrepresentations included telling client that interim support payments had been secured when this was not the case, and telling client that hearings had been scheduled when this was not true.
- 2) Failure to investigate assets of corporation held in community property during a divorce proceeding despite being requested by client to do so

Klein, Don

See rules 16-102, 16-103, 16-104, 16-303, 16-304, 16-803(D), 16-804(H)

Disciplinary No. 07-92-221

NMBBULL Vol. 34, No. 26, June 29, 1995

See also NMBBULL Vol. 34, No. 20, May 18, 1995

Conduct resulting in rule violation:

- 1) Failure to provide the required thoroughness, legal skill and preparation necessary for adequate representation of client in divorce case
- 2) Failure to attend scheduled meeting with client
- 3) Failure to attend pretrial hearing in divorce case
- 4) Failure to inform client of trial on issues of child custody and support
- 5) Failure to inform client that an order was issued requiring client to pay interim child support.

Worley, Gregory D.

See rules 16-103, 16-302, 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 07-93-241

NMBBULL Vol. 33, No. 25, Jun. 23, 1994

Conduct resulting in rule violation:

1) Despite having filed a timely Notice of Appeal, lawyer failed to file a docketing statement for his client in a criminal case.

Gay, Gordon L.

See rule 16-804(D)

Disciplinary No. 09-90-195

NMBBULL Vol. 30, No. 18, May 2, 1991

Conduct resulting in rule violation:

- 1) Lawyer inexperienced in criminal defense accepted appointment from Public Defender to work on a felony child abuse resulting in death case. Following conviction, the case was reversed and remanded on appeal due to ineffective assistance of counsel. The appellate court opinion provided the basis upon which the Disciplinary Board found a violation of Rule 16-101, and was focused on the following:
- 2) Failure to object to or move to suppress statement by codefendant, which the Prosecution used at least four times during trial
- 3) Failure to protect defendant's attorney-client privilege in regards to defense requested mental examinations
- 4) Failure to prepare for trial and interview expert witnesses regarding their testimony.
- 5) The Disciplinary Board noted that this attorney had worked in New Mexico for over thirty years with no prior disciplinary record, and that the incompetence found was limited to a singular criminal matter and was attributable to the lawyer's lack of experience in criminal litigation.

Bloomfield, Gerald R.

See rules 16-103, 16-803(D)

See old rules 6-101(A)(2), 6-101(A)(3)

Disciplinary No. 01-88-132

NMBBULL Vol. 27, No. 50, Dec. 15, 1988

Conduct resulting in rule violation:

1) After being contacted in late 1984 or early 1985 by a client who had sustained a personal injury in May 1983, lawyer wrote two letters to an insurance company in the spring of 1985, but neglected to take any further action on the claim. Lawyer was repeatedly contacted by the client, and the lawyer repeatedly assured client that a settlement check would be forthcoming and that the statute of limitations would not run on the client's claim. In May 1987, due to lawyer's inaction, the statute of limitations ran and the client lost his right to pursue his claim.

Kelly, Leo Charles

See rules 16-103, 16-302

See old rules 6-101(2), 6-101(A)(3), 7-103(A)(3)

Disciplinary Nos. 06-86-86 and 06-86-89

NMBBULL Vol. 27, No. 27, July 7, 1988

Conduct resulting in rule violation:

- 1) In the sentencing phase of a capital case, lawyer failed to gather information, interview witnesses, or present any evidence at all in mitigation of his client's conduct. Also, despite never having tried a capital case before, lawyer failed to seek the assistance of lawyers with more experience in the unique aspects of death-penalty defense.
- 2) In a client's lawsuit against a bank, failure to respond to interrogatories and requests for production caused case to be dismissed.
- 3) After client's lawsuit against a bank was dismissed due to failure to respond to an order compelling discovery, failed to seek to have the appeal deadline extended, resulting in removal of jurisdiction from the district court before a hearing on a motion for reconsideration could be held and the appellate court eventually upholding the dismissal.

Privette, H. Gregg

See rules 16-103, 16-304, 16-804(D), 16-804(H)

See old rules 1-102(A)(5), 1-102(A)(6), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), 7-106(C)(7)

Disciplinary No. 06-86-87

NMBBULL Vol. 26, No. 15, April 9, 1987

Conduct resulting in rule violation:

1) Subsequent to an adequate performance at the trial level in a criminal case, lawyer filed an untimely notice of appeal followed by an untimely docketing statement that was deficient in nearly every respect. The docketing statement reflected such incompetence as to warrant the conclusion that the lawyer had neither read the rules of appellate procedure nor associated with an attorney knowledgeable of them.

Blackhurst, H. Richard

See rules 16-103, 16-801(B), 16-804(D), 16-804(H)

See old rules 1-101(C), 1-102(A)(5), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(3)

Disciplinary No. 86-02-1130

NMBBULL Vol. 25, No. 37, Sept. 11, 1986

Conduct resulting in rule violation:

1) Failure to note, as required by law, presence of a third party lien on bill of sale for a mobile home.

Silko, John

See rules 16-115(B), 16-804

See old rules 1-102(A)(6), 7-101(A)(3), 9-102(B)(4)

Disciplinary No. 03-85-58

NMBBULL Vol. 25, No. 2, Jan. 9, 1986

Conduct resulting in rule violation:

1) New Mexico attorney who was working for an out of state collection agency became embroiled in a fee dispute with his client. The attorney betrayed his client by writing to the state regulatory authority requesting that his client not be licensed as a collection agency in New Mexico until the dispute between himself and his client was resolved. Also, he wrote to several of his client's customers advising them that his client might no longer be legally licensed as a collection agency in New Mexico.

Disciplinary Note

See rules 16-102(A), 16-102(E), 16-115(B)
NMBBULL Vol. 32, No. 19, May 13, 1993

Conduct resulting in Disciplinary Notice:

1) A competent lawyer should monitor a client's rehabilitative progress and perhaps even obtain the opinion of an independent medical doctor to ensure that client's ongoing medical treatment by a third party medical practitioner, who has a financial interest in the client's settlement or judgment, is not excessive.

Disciplinary Note

See old rule 6-101(A)(2)

NMBBULL Vol. 25, No. 26, June 26, 1986

Conduct resulting in Disciplinary Notice:

1) An assistant district attorney was assigned to prosecute two juveniles. He decided to proceed to trial despite the fact that he had failed to seek the arrest report, investigative report, or any other relevant information from investigative authorities. No subpoenas were ever issued or served, and he failed to prepare any witnesses for testimony. This conduct was close to violating the prohibition against handling a legal matter without adequate preparation.

16-102: Scope of representation.

- A. **Client's Decisions.** A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to Paragraphs C, D, and E, and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea entered, whether to waive jury trial and whether the client will testify.
- B. **Representation not endorsement of client's views.** A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- C. **Limitation of representation.** A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- D. **Course of conduct.** A lawyer shall not engage, or counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent or which misleads the court, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.
- E. **Consultation on limitations of assistance.** When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

Avallone, Anthony F.

See rules 16-107, 16-108(G), 16-115(B)

Disciplinary No. 01-95-269

[NMBBULL Vol. 35, No. 28, July 11, 1996](#)

Conduct resulting in rule violation:

1) 16-102(A) When representing both a woman and her parents as plaintiffs in a tort action, accepted settlement from insurance agency, deducted his fee, and gave the rest to the woman without informing or consulting her parents even though her parents were liable for their daughter's hospital bills and her parents were technically still the lawyer's client.

Klein, Don

See rules 16-101, 16-103, 16-104, 16-303, 16-304, 16-803(D), 16-804(H)

Disciplinary No. 07-92-221

[NMBBULL Vol. 34, No. 26, June 29, 1995](#)

See also NMBBULL Vol. 34, No. 20, May 18, 1995

Conduct resulting in rule violation:

1) Failed to meet or otherwise communicate with client to properly ascertain objectives of representation in divorce case

Norton, Richard E.

See rules 16-109(A), 16-304(C)

Disciplinary No. 08-89-171

NMBBULL Vol. 29, No. 21, May 24, 1990

Conduct resulting in rule violation:

1) 16-102(A) Failure to consult with or abide by corporate client's decisions in a bankruptcy proceeding, including the execution of releases from records that the client had not authorized and other allegations of disloyalty and insubordination.

Disciplinary Note

See rules 16-101, 16-115(B)

[NMBBULL Vol. 32, No. 19, May 13, 1993](#)

Conduct resulting in Disciplinary Notice:

- 1) 16-102(A) Once an attorney has accepted from his client an assignment of a portion of the proceeds from the case to a third party creditor, the client may not unilaterally cancel or modify the assignment in derogation of the rights of the assignee, and the attorney is obligated to distribute the proceeds in accordance with the promise to the third party.
- 2) 16-102(E) The attorney's obligations to the client's creditors relative to any liens must be explained to the client.

Disciplinary Note

See rules 16-303(D), 16-804(A), 16-804(C)
[NMBBULL Vol. 28, No. 19, May 11, 1989](#)

Conduct resulting in Disciplinary Notice:

1) 16-102(D) The concept of 'judge shopping' is within the jurisdiction of the Disciplinary Board when the conduct involves dishonesty. Refiling a matter in an attempt to obtain a different judge, and failure to disclose that the matter has already been decided upon, in combination with the filing of a false affidavit stating that the client has not previously participated in any litigation concerning the identical matter, constitutes a violation of the prohibition against assisting the client in conduct that misleads the court.

Disciplinary Note

See rules 16-301, 16-804

See old rules 1-102(A)(5), 7-102(A)(1), 7-102(A)(8)

[NMBBULL Vol. 25, No. 1, June 2, 1986](#)

Conduct resulting in Disciplinary Notice:

1) 16-102(D) In a small New Mexico town, an assistant district attorney conditioned the offering of a plea agreement on the defendant's making a \$2500 contribution to an undercover narcotics operation. The \$2500 was not a condition of probation, would not have been a matter of record with the court, and would have at no point been subject to judicial scrutiny. When the defendant refused to pay, the attorney proceeded to offer complete immunity to co-defendants in exchange for their testimony against the defendant. The Disciplinary Board described this conduct as bordering on extortion. As such, it came close to violating the prohibition against engaging in conduct that the lawyer knows is criminal.

Disciplinary Note

See rules 16-304(B), 16-804(C)

See old rules 1-102(A)(4), 7-102(A)(6)

[NMBBULL Vol. 23, No. 24, June 14, 1984](#)

Conduct resulting in Disciplinary Notice:

1) 16-102(D) An attorney wrote to his client to inform her that a hearing had been scheduled in a civil case against her. The client then called the attorney to explain that she would be out of state and unable to attend the hearing. After the client did not appear at two hearings, a default judgment was entered against her. Several months later the client called the attorney and asked if there was anything he could do. The attorney then drafted a motion to set aside the default judgment which stated that the client had no notice of the hearing and that due to an error of the postal service the attorney had not known of his client's whereabouts. The client refused to sign the motion because she felt it was inaccurate and contacted Disciplinary Counsel. At the disciplinary hearing, the attorney explained that by notice he had meant legal notice. The Hearing Committee accepted his explanation and found that there was no intent to defraud, that no false evidence had been created, and the charges were dismissed. The Committee stated, however, that had the motion been signed by the client and presented to the court, there would have been misconduct warranting disciplinary action.

Disciplinary Note

See rule 16-804(C)

See old rule 1-102(A)(4)

NMBBULL Vol. 25, No. 12, Mar. 22, 1984

Conduct resulting in Disciplinary Notice:

1) 16-102(A) A lawyer who was representing a woman in a claim for damages was unable to contact his client over the weekend after learning on a Friday that the hearing would be held the next Monday. When his client failed to appear on Monday morning, rather than have the case dismissed the lawyer agreed to a settlement with opposing counsel, without consulting his client. He then informed the court that the case had been settled. When contacted by Disciplinary Counsel, the attorney acknowledged that he had violated Ethical Consideration 7-7, which stated that decision making authority to accept a settlement is exclusively that of the client.

Disciplinary Note

See rules 16-105(A), 16-116(B)(5)

See old rules 2-106(A), 2-110(C)(1)(d)

[NMBBULL Vol. 23, No. 11, Mar. 15, 1984](#)

Conduct resulting in Disciplinary Notice:

1) An attorney retainer agreement which gave the attorney full and exclusive right to accept or reject any offer deemed by the attorney to be reasonable was found by Disciplinary Counsel to be in violation of Ethical Consideration 7-7, which stated that decision making authority to accept or reject an offer is exclusively that of the client.

16-103:Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

Costa, Maria R.

See rules 16-101, 16-104(A), 16-302, 16-303(A)(1), 16-304(C), 16-804(C), 16-804(D), 16-804(H)

Reprimand Issued: August 17, 2001 Disciplinary No. 08-98-353

Conduct resulting in rule violation:

1) After initially filing complaint and certificate of service on opposing counsel, delayed for almost a year in responding to opposing counsel's requests for discovery, despite being compelled by order of the court to do so.

Schoepner, John J.

See rules 16-101, 16-104, 16-105(C), 16-108(E), 16-116(D), 16-302, 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 02-99-370

[NMBBULL Vol. 39, No. 49, Dec 7, 2000](#)

Conduct resulting in rule violation:

- 1) Delayed for two years in filing client's lawsuit
- 2) After filing, failure to take action furthering a claim, later causing the statute of limitations to be missed.
- 3) Delayed for two years before sending a demand letter
- 4) Filed suit on last day of three year statute of limitations, despite having known about the case for over two years.
- 5) Failure to meet or communicate with public defender client who was held in custody for over six months.

Juarez, Anna L.

See rules 16-104(A), 16-105(A), 16-116(D), 16-302, 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 04-99-371

[NMBBULL Vol. 39, No. 30, Jul 27, 2000](#)

Conduct resulting in rule violation:

- 1) Took no action for over four years after date of being retained by client to handle probate of estate.
- 2) Made no attempt to serve defendant for several weeks after date the lawyer told the client that the complaint would be served.

Fleming, William C.

See rules 16-104(A), 16-302, 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 10-99-377

[NMBBULL Vol. 39, No. 30, Jul 27, 2000](#)

Conduct resulting in rule violation:

- 1) Took several months to prepare paperwork for the finalization of a divorce

Cordova, Camille

See rules 16-101, 16-104(A), 16-105(A), 16-116(D), 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 12-95-292

[NMBBULL Vol. 37, No. 36, Sept 3, 1998](#)

Conduct resulting in rule violation:

- 1) Delayed for six months in obtaining appointment for a client in Court Clinic.
- 2) Delayed for six months in providing client a copy of court issued Temporary Domestic Order.
- 3) Failure to promptly inform client of change in telephone number and address

Reif, Kurt

See rules 16-101, 16-104

Disciplinary No. 12-95-291

[NMBBULL Vol. 36, No. 46, Nov. 13, 1997](#)

Conduct resulting in rule violation:

- 1) Took eight months to file a complaint
- 2) Took nine months to execute and deliver an uncomplicated assignment of a real estate contract
- 3) Late filing an appellate brief in a criminal case; failure to request an extension or seek leave to file out of time.

Carver, Joanne M.

See rules 16-101, 16-104

No disciplinary number given

[NMBBULL Vol. 34, No. 50, Dec. 14, 1995](#)

Conduct resulting in rule violation:

1) Repeated failure to act with due diligence in the representation of clients, including failure to notify clients of upcoming hearings in domestic relations cases

Traub, Rosemary

See rules 16-101, 16-108(E), 16-116(A), 16-302, 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 02-93-228

[NMBBULL Vol. 34, No. 35, Aug 31, 1995](#)

Conduct resulting in rule violation:

- 1) Failure to take timely action in divorce case to secure interim support payments
- 2) Failure to take timely action to investigate assets of corporation held in community property, despite client's concern that her former spouse was dissipating the assets.
- 3) Failure to diligently pursue case in general

Klein, Don

See rules 16-101, 16-102, 16-104, 16-303, 16-304, 16-803(D), 16-804(H)

Disciplinary No. 07-92-221

[NMBBULL Vol. 34, No. 26, June 29, 1995](#)

See also NMBBULL Vol. 34, No. 20, May 18, 1995

Conduct resulting in rule violation:

- 1) Failure to notify client of court dates in divorce case
- 2) Failure to adequately prepare for trial in divorce case
- 3) Failure to advise client of order entered regarding child custody and requiring client to pay interim child support

Fisk, John W.

See rules 16-104, 16-116(D), 16-801(B)

Disciplinary No. 10-93-248

NMBBULL Vol. 34, No. 1, Jan. 5, 1995

Conduct resulting in rule violation:

- 1) Failed to take any action on client's insurance matter for over a year.
- 2) For a period of approximately a year and a half, took little or no action on client's personal injury case.

Worley, Gregory D.

See rules 16-101, 16-302, 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 07-93-241

NMBBULL Vol. 33, No. 25, Jun. 23, 1994

Conduct resulting in rule violation:

1) Despite having filed a timely Notice of Appeal, lawyer failed to file a docketing statement for his client in a criminal case.

Jason, Elza

See rules 16-104, 16-803(D)

Disciplinary No. 04-90-188

Reprimand Issued: September 7, 1990

Conduct resulting in rule violation:

1) After being retained to handle a probate matter in 1987 and resolving most of the issues at that time, lawyer delayed for over two years and took action only upon the prodding of disciplinary counsel before assembling and forwarding the final paperwork to complete the probate to her client.

Bloomfield, Gerald R.

See rules 16-101, 16-803(D)

See old rules 6-101(A)(2), 6-101(A)(3)

Disciplinary No. 01-88-132

NMBBULL Vol. 27, No. 50, Dec. 15, 1988

Conduct resulting in rule violation:

1) After being contacted in late 1984 or early 1985 by a client who had sustained a personal injury, lawyer initially wrote two letters to an insurance company, but failed to take any further action on the claim for more than two years, despite being prodded to do so by the client and the lawyer's reassuring the client that the statute of limitations would not be missed. Eventually, due to the lawyer's inaction, the statute of limitations ran and the client lost his right to pursue his claim in court.

Sandoval, Jess

See rules 16-104(A), 16-104(B), 16-803(D)

Disciplinary No. 08-87-122

NMBBULL Vol. 27, No. 27, July 7, 1988

Conduct resulting in rule violation:

1) Failure to act with due diligence both while representing client in a divorce proceeding and in withdrawing from case after being discharged by the client.

Kelly, Leo Charles

See rules 16-101, 16-302

See old rules 6-101(2), 6-101(A)(3), 7-103(A)(3)

Disciplinary Nos. 06-86-86 and 06-86-89

NMBBULL Vol. 27, No. 27, July 7, 1988

Conduct resulting in rule violation:

- 1) In the sentencing phase of a capital case, lawyer neglected to seek out and investigate facts that the jury might have considered in mitigation before imposing a death sentence.
- 2) In a client's lawsuit against a bank, failure to respond to interrogatories and requests for production caused case to be dismissed.
- 3) After client's lawsuit against a bank was dismissed due to failure to respond to an order compelling discovery, failed to seek to have the appeal deadline extended, resulting in removal of jurisdiction from the district court before a hearing on a motion for reconsideration could be held and the appellate court eventually upholding the dismissal.

Privette, H. Gregg

See rules 16-101, 16-304, 16-804(D), 16-804(H)

See old rules 1-102(A)(5), 1-102(A)(6), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), 7-106(C)(7)

Disciplinary No. 06-86-87

NMBBULL Vol. 26, No. 15, April 9, 1987

Conduct resulting in rule violation:

1) Apparently under the mistaken belief that a Notice of Appeal could be filed within 30 days from the entry of Judgment and Sentence, rather than within 10 days as required by the Rules of Appellate Procedure that were in force at that time, lawyer was three weeks late in filing Notice of Appeal.

2) Apparently under the mistaken belief that a docketing statement could be filed within 30 days from a Notice of Appeal, rather than within 10 days as required by the Rules of Appellate Procedure in force at that time, lawyer filed a docketing statement almost three weeks later than required.

3) In failing to timely file Notice of Appeal and docketing statement, lawyer neglected the needs of his client and failed to pursue his client's lawful objectives through reasonably available means.

Blackhurst, H. Richard

See rules 16-101, 16-801(B), 16-804(D), 16-804(H)

See old rules 1-101(C), 1-102(A)(5), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(3)

Disciplinary No. 86-02-1130

NMBBULL Vol. 25, No. 37, Sept. 11, 1986

Conduct resulting in rule violation:

- 1) Failure to note, as required by law, presence of a third party lien on bill of sale for a mobile home.
- 2) Despite initially filing motions on behalf of clients in a bankruptcy proceeding, lawyer failed to request hearing or take any other action on the matter, resulting in the clients being denied any opportunity to be heard at all.

Duran, Peter G.

See rules 16-801(B), 16-804(D)

See old rules 1-101(C), 1-102(A)(5), 6-101(A)(3), 7-101(A)(1)

Disciplinary No. 06-83-30

NMBBULL Vol. 23, No. 18, May 3, 1984

Conduct resulting in rule violation:

- 1) While handling a personal injury claim, lawyer conveyed an offer of settlement to his client, which the client agreed to accept. Thereafter, the client was unable to reach the lawyer for over two months, despite numerous attempts. Eventually, the client had another lawyer complete the case for him.
- 2) On two separate occasions, despite having accepted retainer fees from clients, took no action on behalf of clients.

Tabet, Thomas A.

See old rule 6-101(A)(3)

Disciplinary No. 01-83-20

[NMBBULL Vol. 22, No. 43, Oct. 27, 1983](#)

Conduct resulting in rule violation:

1) After leading clients to believe he was taking care of the matter, lawyer failed to file responsive pleadings or obtain extension of time to do so, resulting in default judgment being entered against clients and consequently the loss (later set aside) of their entire interest in their house and land for being several days late in repaying a \$5000 debt.

Sullivan, Clyde

See old rules 6-101(A)(3), 7-101(A)(1), 7-101(A)(2)

Disciplinary No. 3-82-1

NMBBULL Vol. 21, No. 51, Dec. 23, 1982

Conduct resulting in rule violation:

1) Despite accepting \$500 as partial payment toward a retainer fee in a criminal case, lawyer failed to take any action at all on behalf of the client other than to visit him twice briefly in jail before being discharged by the client after about six weeks.

Disciplinary Note

See old rule 6-101(A)(3)

[NMBBULL Vol. 24, No. 50, Dec. 18, 1985](#)

Conduct resulting in Disciplinary Notice:

1) An attorney was appointed to handle the appeals of an indigent criminal defendant. After losing both appeals at the appellate court level, the attorney informed his client that he felt that there was no basis for further appeal to the Supreme Court. At the insistence of the client, the attorney wrote a petition for certiorari, however, he submitted it one day late. Disciplinary Counsel informally admonished the attorney that once he had agreed to take the appeal one step further, he was obligated to do so within the appropriate time limit.

16-104: Communication.

- A. **Status of matters.** A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- B. **Client's informed decision-making.** A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Costa, Maria R.

See rules 16-101, 16-103, 16-302, 16-303(A)(1), 16-304(C), 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 08-98-353

Reprimand Issued: August 17, 2001

Conduct resulting in rule violation:

- 1) 16-104(A) Filed motion to reinstate cause of action without consulting with or informing client that case had been dismissed because the lawyer had failed to comply with a court order.
- 2) 16-104(A) Refusal for almost a year to respond to opposing counsel's reasonable requests for discovery, including failure to comply with a court order compelling discovery.

Schoepner, John J.

See rules 16-101, 16-103, 16-105(C), 16-108(E), 16-116(D), 16-302, 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 02-99-370

[NMBBULL Vol. 39, No. 49, Dec 7, 2000](#)

Conduct resulting in rule violation:

- 1) Unavailable to take calls; repeated failure to promptly return calls, sometimes for two or three months.
- 2) Failure to respond to client's reasonable requests for information regarding status of suit
- 3) On two occasions, failed to personally meet or speak at any time with public defender clients who were being held in custody prior to trial.

Juarez, Anna L.

See rules 16-103, 16-105(A), 16-116(D), 16-302, 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 04-99-371

[NMBBULL Vol. 39, No. 30, Jul 27, 2000](#)

Conduct resulting in rule violation:

- 1) No response to request for return of documents
- 2) No response to request for explanation of charges
- 3) Failure to provide basic information such as whether probate had been opened
- 4) Repeated failure to return calls
- 5) Failure to timely inform client that defendant was never successfully served.

Fleming, William C.

See rules 16-103, 16-302, 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 10-99-377

[NMBBULL Vol. 39, No. 30, Jul 27, 2000](#)

Conduct resulting in rule violation:

- 1) Failure to inform client that hearing had been continued
- 2) Failure to respond to reasonable inquiries from client asking if the final divorce papers were ready.

Cordova, Camille

See rules 16-101, 16-103, 16-105(A), 16-116(D), 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 12-95-292

[NMBBULL Vol. 37, No. 36, Sept 3, 1998](#)

Conduct resulting in rule violation:

- 1) 16-104(A) Failure to timely inform client when a Temporary Domestic Order was issued by the court.
- 2) 16-104(A) Failure to provide client with a written copy of a Temporary Domestic Order for over six months after the order was issued.
- 3) 16-104(A) Refusal to respond to client's numerous requests for an itemized statement detailing services performed and fees incurred.
- 4) Failure to inform client of lawyer's change of address and telephone number.

Reif, Kurt

See rules 16-101, 16-103

Disciplinary No. 12-95-291

[NMBBULL Vol. 36, No. 46, Nov. 13, 1997](#)

Conduct resulting in rule violation:

- 1) Failure to respond to client's phone calls for days or weeks or not at all
- 2) Failure to inform client that additional paperwork was needed for real estate contract
- 3) Failure to respond to letters from a client sent over the course of more than a year
- 4) Failure to respond to reasonable requests for information from client regarding the status of a bankruptcy action
- 5) Failure to respond to reasonable requests for information from client regarding status of a real estate contract.

Carver, Joanne M.

See rules 16-101, 16-103

No disciplinary number given

[NMBBULL Vol. 34, No. 50, Dec. 14, 1995](#)

Conduct resulting in rule violation:

- 1) Failure, on three occasions, to provide timely notice to clients of upcoming hearings in domestic relations cases.
- 2) Repeated failure to respond to client's reasonable requests for information in domestic relations cases

Klein, Don

See rules 16-101, 16-102, 16-103, 16-303, 16-304, 16-803(D), 16-804(H)

Disciplinary No. 07-92-221

[NMBBULL Vol. 34, No. 26, June 29, 1995](#)

See also NMBBULL Vol. 34, No. 20, May 18, 1995

Conduct resulting in rule violation:

- 1) Failure to make any effort to keep client informed regarding the status of his case, including neglecting to tell client about scheduled court dates
- 2) Failure to respond to phone calls and other correspondence from client regarding status of divorce case
- 3) Failure to inform client of entry of order regarding child custody and requiring client to pay interim child support

Fisk, John W.

See rules 16-103, 16-116(D), 16-801(B)

Disciplinary No. 10-93-248

NMBBULL Vol. 34, No. 1, Jan. 5, 1995

Conduct resulting in rule violation:

- 1) Repeated failure to return client's phone calls over a period of approximately one year.

Jason, Elza

See rules 16-103, 16-803(D)

Disciplinary No. 04-90-188

Reprimand Issued: September 7, 1990

Conduct resulting in rule violation:

1) After being retained to handle a probate matter in 1987 and resolving most of the issues at that time, lawyer delayed for over two years before assembling and forwarding the final paperwork to complete the probate to her client. During this time, the client was repeatedly frustrated in her attempts to contact the lawyer and on numerous occasions the lawyer failed to respond to the client's requests for information.

Rivera, Robert L.

See rules 16-803(D), 16-804(B)

Disciplinary No. 10-87-125

NMBBULL Vol. 27, No. 37, Sept. 15, 1988

Conduct resulting in rule violation:

1) While representing the Specialty Tobacco Council as a lobbyist during New Mexico's 1987 legislative session, with the exception of one or two phone calls lawyer failed entirely to communicate with his client, including a failure to inform them that their proposed legislation would not be introduced.

Sandoval, Jess

See rules 16-103, 16-803(D)

Disciplinary No. 08-87-122

NMBBULL Vol. 27, No. 27, July 7, 1988

Conduct resulting in rule violation:

- 1) 16-104(A) While representing a client in a claim against her insurance company for damage to her house that had been intentionally caused by her husband, and also in a divorce proceeding, lawyer failed to keep his client reasonably informed about the status of the litigation.
- 2) 16-104(B) While representing a client in a claim against her insurance company for damage to her house that had been intentionally caused by her husband, and also in a divorce proceeding, lawyer failed to explain the status of the litigation to the client, who was not familiar with the litigation process, in a manner that would permit her to make informed decisions regarding the litigation.

James, James D.

See rules 16-115(B), 16-116, 16-801, 16-804(H)

See old rules 1-101(C), 1-102(A)(5), 2-110(A)(3), 6-101(A)(3), 9-102(B)(3), 9-102(B)(4)

Disciplinary No. 12-86-105

NMBBULL Vol. 26, No. 35, Sept. 3, 1987

Conduct resulting in rule violation:

1) Lawyer moved his office but failed to provide his client, who was in prison, with the lawyer's new contact information, resulting in the client being unable to contact lawyer.

Disciplinary Note

See old rule 6-101(A)(3)

[NMBBULL Vol. 24, No. 50, Dec. 18, 1985](#)

Conduct resulting in Disciplinary Notice:

1) An attorney was retained to appeal the decision of an administrative judge adverse to a social security claimant. The appeal was filed and competently briefed, but the Federal District Court agreed with the administrative judge. In the opinion of the attorney, there was no basis for further appeal to the 10th Circuit court. However, the attorney delayed for two months in telling the client about the ruling and his opinion that filing a further appeal would be pointless. By that time it was too close to the deadline for further appeal for the client to seek the advice or assistance of another attorney.

16-105: Fees.

- A. Determination of reasonableness.** A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer performing the services; and
 - (8) whether the fee is fixed or contingent.
- B. Basis or rate of fees.** When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.
- I. Prohibited fee arrangements.** A lawyer shall not enter into an arrangement for, charge, or collect: **Contingency fees.** A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph D or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
 - (2) a contingent fee for representing a defendant in a criminal case.
- J. Fee splitting.** A division of fee between lawyers who are not in the same firm may be made only if:
- (1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;

- (2) the client is advised of and does not object to the participation of all the lawyers involved; and
- (3) the total fee is reasonable.

Schoepner, John J.

See rules 16-101, 16-103, 16-104, 16-108(E), 16-116(D), 16-302, 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 02-99-370

[NMBBULL Vol. 39, No. 49, Dec 7, 2000](#)

Conduct resulting in rule violation:

1) 16-105(C) Agreed with client that lawyer's fee would be on a contingent basis, but failed to have that agreement put in writing and signed.

Juarez, Anna L.

See rules 16-103, 16-104(A), 16-116(D), 16-302, 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 04-99-371

[NMBBULL Vol. 39, No. 30, Jul 27, 2000](#)

Conduct resulting in rule violation:

1) 16-105(A) In two probate cases and one child custody case lawyer charged several hundred dollars without ever explaining specifically what services had been performed.

Cordova, Camille

See rules 16-101, 16-103, 16-104(A), 16-116(D), 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 12-95-292

[NMBBULL Vol. 37, No. 36, Sept 3, 1998](#)

Conduct resulting in rule violation:

1) 16-105(A) Charged client an unreasonable fee for work performed.

Quintana, N. Tito

See rule 16-804(D)

Disciplinary No. 02-90-181

NMBBULL Vol. 29, No. 39, Sept. 27, 1990

Conduct resulting in rule violation:

- 1) 16-105(A) After winning over \$750,000 in a breach of contract action against an insurance company in federal court, lawyer retained an unreasonable fee due in part to his mistaken belief that a \$30,000 pretrial recovery and a \$60,000 statutory attorney fee awarded by the trial court were not within the scope of the contingency fee agreement that he had with his client.
- 2) 16-105(C) Lawyer failed to provide client with a written accounting of the total recovery, remittance to the client, and the method of determining the amount of the remittance to the client at the time that disbursement of the funds was made.

Eaby, Christian

See rule 16-116(D)

See old rules 2-106(A), 2-106(B), 2-110(A)(3)

Disciplinary No. 07-86-92

NMBBULL Vol. 28, No. 27, July 6, 1989

Conduct resulting in rule violation:

1) 16-105(A) Upon accepting unemployment case, lawyer received a \$3000 'non-refundable' retainer fee. Six weeks later, client discharged lawyer and demanded return of full \$3000. However, the lawyer refused to pay, claiming that the fee was non-refundable. Upon investigation by disciplinary counsel, lawyer presented evidence that he had done ten hours of work on the client's case, and that he normally charged \$95 an hour. The disciplinary board said that in cases that do not involve contingency fees a lawyer's fee must always be reasonable, that clients are always entitled to the return of fees paid in advance which have not been earned, and that a \$3000 fee for ten hours worth of effort by an attorney who normally charges \$95 an hour is excessive.

Disciplinary Note

See rule 16-115(C)

NMBBULL Vol. 36, No. 26, June 26, 1997

Conduct resulting in Disciplinary Notice:

1) When representation is terminated prior to completion of the litigation, the unearned portion of any flat fees must be returned to the client. This amount may be based on what the lawyer would have earned at his regular hourly rate, or it may be based on a percentage of the flat fee corresponding to the percentage of the work completed. Failure to return the unearned portion of the fee may constitute charging an unreasonable fee for services performed.

Disciplinary Note

See rule 16-503

[NMBBULL Vol. 35, No. 17, Apr. 25, 1996](#)

Conduct resulting in Disciplinary Notice:

1) Normally, paralegal fees should be considered a part of the attorney's fee in contingency fee agreements, and not billed to the client as a separate cost. This is because normally a paralegal does work that the attorney would have to do anyway. Charging a paralegal's services as a cost in routine contingency fee agreements may constitute a violation of rule 16-105. Exceptions may include instances where the paralegal does work that the attorney would not have otherwise had to do himself.

Disciplinary Note

See rules 16-115(A), 16-115(B)

[NMBBULL Vol. 30, No. 4, Jan. 24, 1991](#)

Conduct resulting in Disciplinary Notice:

1) 16-105(C) Until a fee advance has been earned, such funds belong to the client and should be maintained in the attorney's trust account. When an attorney pays for legal fees out of a trust account, there is an obligation to account for such payment to the client within a reasonably contemporaneous period of time.

Disciplinary Note

[NMBBULL Vol. 28, No. 44, Nov. 2, 1989](#)

Conduct resulting in Disciplinary Notice:

1) 16-105(A) While the New Mexico Supreme Court has excluded contingency fee agreements from the general rule that an attorney's fee must be reasonable, and New Mexico case law holds that an attorney discharged without cause from a contingency fee case is entitled to recover the agreed upon fee on the happening of the contingency, there are occasions where the insistence that one be paid the full amount of the contingency fee could be unreasonable and unethical. For example, when a client decides to switch attorneys shortly after signing a contingency fee agreement at the initiation of litigation, it may be more appropriate to bill the client on an hourly basis rather than according to the terms of the contingency fee contract.

Disciplinary Note

See old rule 2-107(A)

[NMBBULL Vol. 24, No. 33, Aug. 15, 1985](#)

Conduct resulting in Disciplinary Notice:

1) 16-105(E) Two lawyers who were not in partnership were retained by the defendant in a first degree murder case. A flat fee for the services of both was agreed upon and a \$5000 retainer fee was paid. The client subsequently decided to retain other counsel and so discharged the attorneys and asked for a refund of the unearned portion of the retainer fee. A dispute arose regarding the reasonableness of the amount earned. The client claimed that he had not been made aware that the attorneys were not in partnership and that he would be paying separately for each. There was no written fee agreement. A hearing officer with experience in criminal cases reviewed the file and was concerned about the lack of a written fee agreement, however he concluded that the fee was reasonable and felt that the lack of a written fee agreement may have been due to the urgency of the circumstances. The attorneys were cautioned to immediately memorialize in writing any future fee agreements of this type to make clear to clients the fact that they were not in association and would be charging separately for their time.

Disciplinary Note

See old rule 2-106

[NMBBULL Vol. 24, No. 30, Jul. 25, 1985](#)

Conduct resulting in Disciplinary Notice:

1) The charging of minimum non-refundable fees in divorce cases may be violative of public policy and thus constitute an illegal fee. Public policy is to encourage the stability of family units rather than promote their dissolution. Minimum non-refundable fees may hamper reconciliation by creating a financial interest at stake for either of the parties. While at the time this note was written, disciplinary counsel was not aware of a ruling by the New Mexico appellate courts on the subject, other jurisdictions have held this practice to be illegal and the disciplinary board may pursue this theory in the future.

Disciplinary Note

See rules 16-102(A), 16-116(B)(5)

See old rules 2-106(A), 2-110(C)(1)(d)

NMBBULL Vol. 23, No. 11, Mar. 15, 1984

Conduct resulting in Disciplinary Notice:

1) 16-105(A) A woman signed a contingency fee agreement that entitled her attorneys to 1/3 of any amount recovered from any party, including 'insurance carriers'. When it was later discovered that the defendant did not have insurance, the woman was able to recover \$15,000 under the uninsured motorist clause of her own insurance. The attorneys demanded to be paid \$5000, even though they had put very little work into the case at that point. Disciplinary Counsel felt that the contingency fee agreement was insufficient to put the client on notice that her attorneys would claim a portion of the reimbursement from the client's own insurance. The attorneys subsequently dropped their claim and agreed to accept payment on an hourly basis.

Disciplinary Note

See rule 16-804(H)

See old rules 1-102(A)(6), 2-106

NMBBULL Vol. 23, No. 10, Mar. 8, 1984

Conduct resulting in Disciplinary Notice:

1) 16-105(A) A reviewing officer noticed that an attorney had billed three hours of his time for composing a letter to his client advising his client on how to conduct herself at trial. While the letter was five pages long, it was obviously a form letter. Several paragraphs of the letter contained instructions for plaintiffs seeking personal injury damages, and were entirely unrelated to the client's divorce case. The attorney was informally admonished for violating the prohibition against charging a clearly excessive fee.

16-106: Confidentiality of information.

- A. Disclosure of information generally.** A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in Paragraphs B, C and D.
- B. Disclosure to prevent harm to others.** To prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm, a lawyer should reveal such information to the extent the lawyer reasonably believes necessary.
- C. Disclosure to prevent financial or property-related harm.** To prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another, a lawyer may reveal such information to the extent the lawyer reasonably believes necessary.
- D. Disclosure in lawyer-client controversy.** To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client, a lawyer may reveal such information to the extent the lawyer reasonably believes necessary.

16-107: Conflict of interest; general rule.

- A. Representation adverse to other client considered.** A lawyer shall not represent a client if the representation of that client will be directly or substantially adverse to another client, unless:
- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
 - (2) each client consents after consultation. The consultation shall include explanation of the implications of the common representation and the advantages and risks involved.
- B. Lawyer's other responsibilities considered.** Unless otherwise required by these rules, a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
- (1) the lawyer reasonably believes the representation will not be adversely affected; and
 - (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Avallone, Anthony F.

See rules 16-102(A), 16-108(G), 16-115(B)

Disciplinary No. 01-95-269

NMBBULL Vol. 35, No. 28, July 11, 1996

Conduct resulting in rule violation:

1) Represented both a woman and her parents in a tort action even though there was a conflict of interest between the woman and her parents because the parents were liable for their daughter's hospital bills.

Bell, Ronald Alan

See rules 16-804(A), 16-804(C), 16-804(D)

See old rules 1-102(A)(2), 1-102(A)(4), 1-102(A)(5), 5-105

Disciplinary No. 09-84-49

NMBBULL Vol. 24, No. 26, June 27, 1985

Conduct resulting in rule violation:

1) Following the division of a business owned by A and B, lawyer prepared and was involved in filing pleadings on behalf of B that were adverse to A, even though lawyer was representing A in other matters at that time.

Disciplinary Note

See rule 16-109

See old rule 5-105

NMBBULL Vol. 24, No. 1, Jan. 3, 1985

Conduct resulting in Disciplinary Notice:

1) A lawyer working for a corporation sought leave to withdraw as counsel after a dispute arose regarding a settlement that the lawyer had negotiated between the corporation and a national distributor. Subsequently, the lawyer accepted employment working for one of the corporation's customers and filed a lawsuit against the corporation for breach of contract involving some of the issues that had been negotiated in the settlement between the corporation and the national distributor. The lawsuit was filed at a time that the attorney was still the attorney of record for the corporation. The corporation was not consulted and did not consent to the attorney's representation of the customer. The Disciplinary Board said this was a violation of the prohibition against representing clients with adverse interests, and the lawyer was cautioned accordingly.

16-108: Conflict of interest; prohibited transactions.

- A. Business transactions with or adverse to client.** A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
 - (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
 - (3) the client consents in writing thereto.
- B. Use of information limited.** Unless otherwise required by these rules, a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation.
- C. Client gifts.** A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.
- D. Literary or media rights.** Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- E. Financial assistance.** A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
- (1) A lawyer may advance court costs and expenses of litigation, provided the client remain ultimately liable for such costs and expenses.
 - (2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
- F. Compensation from third party.** A lawyer shall not accept compensation for representing a client from one other than the client unless:
- (1) the client consents after consultation;
 - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
 - (3) information relating to representation of a client is protected as required by Rule 16-106.
- G. Representation of two or more clients.** A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless

each client consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

- H. Prospective malpractice liability limitation.** A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.
- I. Representation adverse to representation by related lawyer.** A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.
- J. Proprietary interest in cause of action.** A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
- (1) acquire a lien granted by law to secure the lawyer's fee or expenses; and
 - (2) contract with a client for a reasonable contingent fee in a civil case.

16-108: Conflict of interest; prohibited transactions.

Schoepner, John J.

See rules 16-101, 16-103, 16-104, 16-105(C), 16-116(D), 16-302, 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 02-99-370

NMBBULL Vol. 39, No. 49, Dec 7, 2000

Conduct resulting in rule violation:

- 1) 16-108(E) Told client that he would litigate a second, unrelated claim free of charge due to unsatisfactory performance on first claim.
- 2) 16-108(E) Made payments to client for the purpose of mitigating damages that lawyer knew were incurred due to lawyer's inaction.

16-108: Conflict of interest; prohibited transactions.

Compton, James C.

See rules 16-108(A), 16-804(C), 16-804(H)

Disciplinary No. 10-95-284

[NMBBULL Vol. 36, No. 19, May 8, 1997](#)

Conduct resulting in rule violation:

1) 16-108(A) Accepted stock in exchange for legal services; failed to have fee arrangement put into writing and signed by client; failed to advise client to seek advice of independent counsel

16-108: Conflict of interest; prohibited transactions.

Avallone, Anthony F.

See rules 16-102(A), 16-107, 16-115(B)

Disciplinary No. 01-95-269

NMBBULL Vol. 35, No. 28, July 11, 1996

Conduct resulting in rule violation:

1) 16-108(G) Agreed to settlement with an insurance company in a tort action when representing both a woman and her parents; failed to consult the parents prior to the settlement even though parents had an interest in the settlement because they were liable for their daughter's hospital bills.

16-108: Conflict of interest; prohibited transactions.

Traub, Rosemary

See rules 16-101, 16-103, 16-116(A), 16-302, 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 02-93-228

NMBBULL Vol. 34, No. 35, Aug 31, 1995

Conduct resulting in rule violation:

1) 16-108(E) Lawyer provided client interim support payments in divorce case while misrepresenting to client that client's former spouse was making the payments

16-108: Conflict of interest; prohibited transactions.

Perrine, John

See rule 16-804(D)

See old rules 1-102(A)(5), 6-102(A)

NMBBULL Vol. 21, No. 51, Dec. 23, 1982Disciplinary No. 12-81-7

Conduct resulting in rule violation:

1) 16-108(H) When disagreements arose between lawyer and clients following his representation of them at the trial court level, lawyer refused to handle appeal for clients until they signed a waiver of any cause of action clients may have had against lawyer for malpractice.

Disciplinary Note

See rules 16-701(A)(1), 16-701(A)(5), 16-704
NMBBULL Vol. 29, No. 32, Aug. 9, 1990

Conduct resulting in Disciplinary Notice:

1) 16-108(E) In a contingency fee arrangement, while a lawyer may advance for a client court costs and expenses of litigation, clients must be advised of their ultimate liability for such costs and expenses. This is true regardless of whether the lawyer elects to pursue claims for costs and expenses advanced on behalf of clients whose litigation was unsuccessful.

16-108: Conflict of interest; prohibited transactions.

Disciplinary Note

See rules 16-115(B), 16-115(C)

NMBBULL Vol. 29, No. 18, May 3, 1990

Conduct resulting in Disciplinary Notice:

1) 16-108(E) While an attorney is not responsible for (and is even prohibited from) paying a client's debts, an attorney has a fiduciary responsibility to any debtors of the client to whom he has represented that payment will be forthcoming from the proceeds of a settlement or judgment and is obligated to see that the debt is paid.

16-109: Conflict of interest; former client.

- A lawyer who has formerly represented a client in a matter shall not thereafter:
- A. represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or
 - B. use information relating to the representation to the disadvantage of the former client except as Rule 16-106 would permit with respect to a client or when the information has become generally known.

Norton, Richard E.

See rules 16-102(A), 16-304(C)

Disciplinary No. 08-89-171

NMBBULL Vol. 29, No. 21, May 24, 1990

Conduct resulting in rule violation:

1) 16-109(A) During and subsequent to representing a corporate client in a bankruptcy proceeding, and without the corporate client's consent, lawyer began to give advice to and then legally represent third party investors in a substantially related matter whose interests were materially adverse to the former corporate client.

Disciplinary Note

See rule 16-107

See old rule 5-105

NMBBULL Vol. 24, No. 1, Jan. 3, 1985

Conduct resulting in Disciplinary Notice:

1) A lawyer working for a corporation sought leave to withdraw as counsel after a dispute arose regarding a settlement that the lawyer had negotiated between the corporation and a national distributor. Subsequently, the lawyer accepted employment working for one of the corporation's customers and filed a lawsuit against the corporation for breach of contract involving some of the issues that had been negotiated in the settlement between the corporation and the national distributor. The lawsuit was filed at a time that the attorney was still the attorney of record for the corporation. The Disciplinary Board noted that even if the corporation had only been a former client, the conflict of interest between the corporation and its customer would still have prohibited the lawyer from accepting employment with the customer, absent express consent from the corporation, because the subject matter of the two representations was substantially related.

16-110:Imputed disqualification; general rule.

- A. **Firm association.** While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 16-107, Paragraph C of Rule 16-108, Rule 16-109 or 16-202.
- B. **Previous representation.** When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rule 16-106 and Paragraph B of Rule 16-109 that is material to the matter.
- C. **Terminated associations.** When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:
 - (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
 - (2) any lawyer remaining in the firm has information protected by Rule 16-106 and Paragraph B of Rule 16-109 that is material to the matter.
- D. **Waiver of disqualification.** A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 16-107.

16-111: Successive government and private employment.

- A. Subsequent private representation.** Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents in writing after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
- (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.
- B. Confidential government information.** Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.
- C. Subsequent government employment.** Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:
- (1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or
 - (2) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.
- D. "Matter" defined.** As used in this rule, the term "matter" includes:
- (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and
 - (2) any other matter covered by the conflict of interest rules of the appropriate government agency.
- E. "Confidential government information" defined.** As used in this rule, the term "confidential government information" means information which has been obtained under governmental authority and which, at the time this rule is applied,

the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

F. "Screened" defined. As used in this rule, the term "screened" means that appropriate steps shall be taken to insure that no information about the matter is, or shall be, transmitted to or from the disqualified lawyer.

G. Advocacy before governmental body. A lawyer in private practice shall not appear as an advocate before a governmental body or any division thereof, or governmental agency or commission, at any time when the lawyer is representing that same governmental body or division, agency or commission in another matter. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue advocacy in such a circumstance, unless:

- (1) the disqualified lawyer is screened from any participation in the matter; and
- (2) written notice is promptly given to the appropriate governmental agency and to any adverse party to enable such agency or party to ascertain compliance with this rule. Provided, however, that nothing in this rule shall be interpreted to prohibit an attorney appearing as an advocate before one division or an executive department while representing another division within the same department, so long as said attorney has not, during his representation of the division, advised or had significant contact with the secretary or other administrative head governing both divisions.

16-112:Former judge or arbitrator.

- A. **Subsequent representation in related matters.** Except as stated in Paragraph D, a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally as a judge or other adjudicative officer, arbitrator or law clerk to such a person, unless the court, if applicable, and all parties to the proceeding consent after disclosure.
- B. **Negotiation for employment.** A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or arbitrator. A lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, other adjudicative officer or arbitrator.
- C. **Representation by firm.** If a lawyer is disqualified by Paragraph A, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:
 - (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (2) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.
- D. **Arbitrator.** An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

16-113:Organization as client.

- A. **Generally.** A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
- B. **Acting in best interest of organization.** If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant consideration. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:
 - (1) asking reconsideration of the matter;
 - (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
 - (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.
- C. **Terminating representation.** If, despite the lawyer's efforts in accordance with Paragraph B, the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 16-116.
- D. **Identity of client.** In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.
- E. **Personal representation of officer or employee.** A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule

16-107. If the organization's consent to the dual representation is required by Rule 16-107, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

16-114:Client under a disability.

- A. **Client-lawyer relationship.** When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- B. **Protective action.** A lawyer may seek the appointment of a guardian or conservator or take other protective action with respect to a client, only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

16-115: Safekeeping property.

- A. **Holding another's property separately.** A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer in a manner that shall be preserved for a period of five (5) years after termination of the representation of the client in the matter or the termination of the fiduciary or trust relationship.
- B. **Notification of receipt of funds or property.** Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
- C. **Severance of interest.** When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.
- D. **Pooled interest-bearing trust accounts.** A lawyer or law firm may elect to create and maintain a pooled interest-bearing trust account for clients' funds which are nominal in amount or to be held for a short period of time in compliance with the following provisions:
 - (1) No earning from such an account shall be made available to a lawyer or law firm.
 - (2) The account shall include all clients' funds which are nominal in amount or to be held for a short period of time.
 - (3) An interest-bearing trust account may be established with any bank, savings and loan association or credit union authorized by federal or state law to do business in New Mexico and insured by the federal deposit insurance corporation, the federal savings and loan insurance corporation or the national credit union administration. Funds in each interest-bearing trust account shall be subject to withdrawal upon request and without delay.

- (4) The rate of interest payable on any interest-bearing trust account shall not be less than the rate paid by the depository institution to regular, nonlawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm on some or all of deposited funds so long as there is no impairment of the right to withdraw or transfer principal immediately.
- (5) Lawyers or law firms depositing client funds in a trust savings account established pursuant to this paragraph shall direct the depository institution:
 - (a) to remit interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, to the center for civic values ("center") which shall hold such funds as trustee for the benefit of the programs set forth below;
 - (b) to transmit with each remittance to the center a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of interest applied; and
 - (c) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the center, the rate of interest applied, and the average account balance of the period for which the report is made.
- (6) All interest transmitted to the center shall be distributed periodically in accordance with a plan of distribution which shall be prepared at least annually and approved by the Supreme Court of New Mexico, for the following purposes:
 - (a) to provide legal assistance to the poor;
 - (b) to provide legal education;
 - (c) to improve the administration of justice; and
 - (d) for such other programs for the benefit of the public as are specifically approved by the Supreme Court of New Mexico from time to time.

E. **Separate interest-bearing trust accounts.** A lawyer or law firm may establish a separate interest-bearing trust account for clients' funds which are

neither nominal in amount nor to be held for a short period of time for a particular client or client's matter on which the interest, net of any transaction costs, will be paid to the client.

F. **Determination of nominal amount.** In the exercise of a lawyer's good faith judgment in determining whether funds of a client are of such nominal amounts or are expected to be held for such a short period of time that the funds should not be placed in a separate interest-bearing trust account for the benefit of the client, a lawyer shall take into consideration the following factors:

- (1) the amount of interest which the funds would earn during the period they are expected to be deposited;
- (2) the nature of the transaction(s) involved. [As amended, effective February 15, 1988; and effective January 1, 1990; March 4, 1999; July 31, 2000.] the cost of establishing and administering the account, including the cost of the lawyer's services, accounting fees and tax reporting procedures; and

Avallone, Anthony F.

See rules 16-102(A), 16-107, 16-108(G)

Disciplinary No. 01-95-269

NMBBULL Vol. 35, No. 28, July 11, 1996

Conduct resulting in rule violation:

1) 16-115(B) Failed to notify either a hospital or the parents of a client upon accepting settlement from an insurance agency in a tort action; even though both the parents and the hospital had significant interests in the settlement.

Sprague, Joseph T.

See rules 16-116(D), 16-804(D)

Disciplinary No. 01-91-202

NMBBULL Vol. 30, No. 25, Jun. 20, 1991

Conduct resulting in rule violation:

- 1) 16-115(A) After retaining the lawyer for representation in a domestic relations proceeding, client gave the lawyer for safekeeping various original documents, including cancelled checks, tax returns, and handwritten visitation schedules. However, the lawyer failed to appropriately safeguard his client's property because the lawyer lost the file.
- 2) 16-115(B) Failure to promptly deliver various original documents, which were in the lawyer's file but still belonged to the client, was due initially to the lawyer's failure to provide client with his new contact information after moving to Texas, and later due to the fact that the lawyer had lost the client's file.

Trujillo, Phillip

Disciplinary No. 08-88-149

NMBBULL Vol. 28, No. 17, Apr. 27, 1989

Conduct resulting in rule violation:

- 1) 16-115(A) Upon properly settling a bankruptcy matter, lawyer received a \$6000 cashier's check for his client. He deposited the check into his trust account, but failed to first deduct his own fees and costs. Over the next month and a half lawyer drew checks from the account payable to himself in amounts that clearly indicated his own use of his client's money.
- 2) 16-115(B) After receipt of a \$6000 cashier's check for his client, lawyer delayed for a month and a half before notifying client. After notifying the client that the funds had been received, lawyer delayed for over a week before delivering the funds to the client, and also failed, despite client's request, to render a full accounting of how much he had deducted for his fees and costs.
- 3) 16-115(C) Upon receipt of a \$6000 cashier's check in which both he and his client had an interest, lawyer failed to keep funds separate until there was an accounting and severance of their interests.

Shattuck, Joseph E.

See rules 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 08-88-148

NMBBULL Vol. 28, No. 7, Feb. 16, 1989

Conduct resulting in rule violation:

1) 16-115(C) Although he disputed his obligation to return all of a \$2000 retainer fee after being discharged by his client the very next day after being retained, lawyer failed to hold the \$2000 separately in his trust account until the dispute was resolved.

James, James D.

See rules 16-104, 16-116, 16-801, 16-804(H)

See old rules 1-101(C), 1-102(A)(5), 2-110(A)(3), 6-101(A)(3), 9-102(B)(3), 9-102(B)(4)

Disciplinary No. 12-86-105

NMBBULL Vol. 26, No. 35, Sept. 3, 1987

Conduct resulting in rule violation:

- 1) After being discharged by a client who was in prison, lawyer failed to promptly return the unearned portion of a \$1000 advance fee.
- 2) Lawyer failed to promptly render an accounting to disciplinary counsel of a \$1000 fee that had been advanced to the lawyer by a client who was in prison.

Silko, John

See rules 16-101, 16-804

See old rules 1-102(A)(6), 7-101(A)(3), 9-102(B)(4)

Disciplinary No. 03-85-58

NMBBULL Vol. 25, No. 2, Jan. 9, 1986

Conduct resulting in rule violation:

1) New Mexico attorney who was working for an out of state collection agency became embroiled in a fee dispute with his client. The attorney wrote letters to the client's debtors demanding that payment be made directly to him, received such payments, and failed to remit these payments to his client. The attorney had no legal right to represent that payment should be made directly to himself or to retain the money.

Grenko, Ronald A.

See old rules 9-102(B)(3), 9-102(B)(4)
Disciplinary Nos. 10-82-18 and 12-83-37
NMBBULL Vol. 23, No. 40, Oct. 4, 1984

Conduct resulting in rule violation:

- 1) 16-115(A) Repeated failure to keep complete records of money held in client trust accounts, causing several checks written on behalf of the clients to be returned for lack of sufficient funds.
- 2) 16-115(B) Twice failed to promptly deliver to third parties money to which they were entitled that the attorney held in client trust accounts.

Long, Stephen C. M.

See rules 16-804(A), 16-804(H)

See old rules 1-102(A)(1), 1-102(A)(6), 9-102

Disciplinary No. 01-83-20

Reprimand Issued: July 15, 1983

Conduct resulting in rule violation:

1) 16-115(A) Lawyer knowingly borrowed \$9000 from his client's trust funds to pay for his own unrelated personal and business expenses.

Disciplinary Note

See rule 16-105(A)

NMBBULL Vol. 36, No. 26, June 26, 1997

Conduct resulting in Disciplinary Notice:

1) When representation terminates prior to completion of litigation and a dispute arises concerning what portion of a flat fee has been earned, the lawyer must hold the funds in dispute separate from his personal property until the dispute is resolved.

Disciplinary Note

NMBBULL Vol. 36, No. 25, June 19, 1997

Conduct resulting in Disciplinary Notice:

1) Any fee or portion of a fee that is unearned must be returned to the client. This includes unearned portions of flat fees and retainer fees. There is no such thing as a non-refundable unearned fee. Lawyers must hold unearned portions of any fees paid in advance in trust until the fee or portion of the fee is earned.

Disciplinary Note

NMBBULL Vol. 33, No. 44, Nov. 3, 1994

Conduct resulting in Disciplinary Notice:

1) 16-115(B) An attorney has a right to retain property that a client is otherwise entitled to in an effort to collect attorney fees and costs, however, in certain circumstances ethical considerations may require the attorney to forgo that right. While the Disciplinary Board will decide the matter based on the facts of each case, these circumstances may include when the client may lose an important liberty interest or substantive right, when the client is financially unable to pay and the property is irreplaceable, or when the lawyer is guilty of misconduct.

Disciplinary Note

See rules 16-101, 16-102(A), 16-102(E)
NMBBULL Vol. 32, No. 19, May 13, 1993

Conduct resulting in Disciplinary Notice:

1) Once an attorney has accepted from his client an assignment of a portion of the proceeds of the case to a third party creditor, the client may not unilaterally cancel or modify the assignment in derogation of the rights of the assignee. The attorney in such a situation is obligated to distribute the proceeds of the settlement or judgment in accordance with the promise to the creditor.

Disciplinary Note

See rules 16-105(C)

NMBBULL Vol. 30, No. 4, Jan. 24, 1991

Conduct resulting in Disciplinary Notice:

- 1) 16-115(A) Until a fee advance has been earned, such funds belong to the client and should be maintained in the attorney's trust account.
- 2) 16-115(B) When an attorney pays for legal fees out of a trust account, there is an obligation to account for such payment to the client within a reasonably contemporaneous period of time.

Disciplinary Note

See rules 16-108(E)

NMBBULL Vol. 29, No. 18, May 3, 1990

Conduct resulting in Disciplinary Notice:

- 1) 16-115(B) When an attorney has represented to a client's third party creditor that payment will be forthcoming out of judgment or settlement proceeds, and the proceeds are sufficient to meet the designated debts, the attorney is obligated to see that the debts are paid.
- 2) 16-115(C) When a third party creditor has an interest in a settlement or judgment, and the client disputes the third party's interest, the attorney must hold the disputed funds in trust until the dispute is resolved.

Disciplinary Note

See old rule 9-102(A)

NMBBULL Vol. 25, No. 6, June 30, 1986

Conduct resulting in Disciplinary Notice:

1) An attorney took a 'shortcut' by paying office expenses using money that the attorney had earned directly out of a client trust account rather than first transferring the money to the attorney's personal account. Money that has been earned by an attorney should be removed from a client's trust account immediately. Payment of an attorney's own expenses directly from a client's trust account indicates commingling of client and attorney funds, gives rise to suspicions that defalcation of client funds has taken place, and creates the appearance of impropriety.

16-116: Declining or terminating representation.

- A. **Mandatory disqualification.** Except as stated in Paragraph C, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the representation will result in violation of the Rules of Professional Conduct or other law;
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (3) the lawyer is discharged.
- B. **Permissive withdrawal.** Except as stated in Paragraph C, a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:
- (1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
 - (2) the client has used the lawyer's services to perpetrate a crime or fraud;
 - (3) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;
 - (4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
 - (5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (6) other good cause for withdrawal exists.
- C. **Representation required.** When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- D. **Orderly termination.** Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by law, or the Rules of Professional Conduct.

Schoepner, John J.

See rules 16-101, 16-103, 16-104, 16-105(C), 16-108(E), 16-302, 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 02-99-370

NMBBULL Vol. 39, No. 49, Dec 7, 2000

Conduct resulting in rule violation:

1) 16-116(D) After being discharged, took four months to forward file to client's new attorney

Juarez, Anna L.

See rules 16-103, 16-104(A), 16-105(A), 16-302, 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 04-99-371

NMBBULL Vol. 39, No. 30, Jul 27, 2000

Conduct resulting in rule violation:

- 1) After termination, failure to return documents requested by probate client
- 2) After termination, failure to refund unearned fees to child custody client

Cordova, Camille

See rules 16-101, 16-103, 16-104(A), 16-105(A), 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 12-95-292

NMBBULL Vol. 37, No. 36, Sept 3, 1998

Conduct resulting in rule violation:

- 1) Lawyer's failure to provide client with her new address and telephone number caused client's transition to a new lawyer to be inexpedient and disorderly
- 2) After discharge, failure to timely forward client's file to new attorney

Traub, Rosemary

See rules 16-101, 16-103, 16-108(E), 16-302, 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 02-93-228

NMBBULL Vol. 34, No. 35, Aug 31, 1995

Conduct resulting in rule violation:

1) 16-116(A) Failure to withdraw from representation despite physical and mental disabilities, including migraine headaches, that were impairing lawyer's ability to counsel effectively.

Fisk, John W.

See rules 16-103, 16-104, 16-801(B)

Disciplinary No. 10-93-248

NMBBULL Vol. 34, No. 1, Jan. 5, 1995

Conduct resulting in rule violation:

1) 16-116(D) Despite repeated requests, lawyer failed to forward client's file to her new attorney after being discharged by the client.

Sprague, Joseph T.

See rules 16-115(A), 16-115(B), 16-804(D)

Disciplinary No. 01-91-202

NMBBULL Vol. 30, No. 25, Jun. 20, 1991

Conduct resulting in rule violation:

1) 16-116(D) After being retained to represent a client in a domestic relations matter, the lawyer failed to attend a hearing and the client was never able to contact him again after that because the lawyer had moved to Texas and left no forwarding address. This abrupt and unilateral termination of the employment relationship deprived the client of reasonable notice of termination, sufficient time to retain alternate counsel, and the prompt and orderly return of the client's original documents.

Eaby, Christian

See rule 16-105(A)

See old rules 2-106(A), 2-106(B), 2-110(A)(3)

Disciplinary No. 07-86-92

NMBBULL Vol. 28, No. 27, July 6, 1989

Conduct resulting in rule violation:

1) 16-116(D) After performing ten hours of work, lawyer who normally charged \$95 an hour refused to refund unearned portion of a \$3000 retainer fee, claiming he had made clear to the client upon being retained that the \$3000 was 'non-refundable'. The disciplinary board said that in cases that do not involve contingency fees, a lawyer's fee must always be reasonable, and that clients are always entitled to the return of fees paid in advance that have not been earned.

Wilson, Margaret S.

See rule 16-804(H)

See old rules 1-102(A)(6), 2-110(A)(2), 2-110(A)(3)

Disciplinary No. 06-87-118

NMBBULL Vol. 27, No. 44, Nov. 3, 1988

Conduct resulting in rule violation:

1) Four months after being retained to handle an employment medical insurance matter, lawyer informed her clients by letter that she had decided to discontinue the practice of law and would be immediately withdrawing from their case. However, in the letter the lawyer failed to provide any means by which her clients could contact her, resulting in the clients spending several months and experiencing substantial frustration as they sought answers to their inquiries, attempted to ascertain the location of their file, sought the refund of \$900 in unearned advance fees, and attempted to locate alternative counsel.

James, James D.

See rules 16-104, 16-115(B), 16-801, 16-804(H)

See old rules 1-101(C), 1-102(A)(5), 2-110(A)(3), 6-101(A)(3), 9-102(B)(3), 9-102(B)(4)

Disciplinary No. 12-86-105

NMBBULL Vol. 26, No. 35, Sept. 3, 1987

Conduct resulting in rule violation:

1) Upon being discharged by a client who was in prison, lawyer failed to promptly return the unearned portion of a \$1000 advance fee and a cassette recorder to the client.

Tapia, Joseph M.

See rules 16-302, 16-304(C), 16-801(B)

See old rules 1-101(C), 2-110(A)(2), 2-110(B)(4), 7-101(A)(1), 7-106(C)(7)

Disciplinary No. 12-85-73

NMBBULL Vol. 25, No. 42, Oct. 16, 1986

Conduct resulting in rule violation:

- 1) 16-116(A)(3) Despite notice of discharge from both former client's new counsel and former client himself, lawyer failed to promptly withdraw from representation.
- 2) 16-116(D) Despite notice of discharge from both former client's new counsel and former client himself, lawyer failed to promptly prepare final statement of charges and failed to promptly deliver file materials to former client.

Disciplinary Note

See old rules 2-110(B)(4), 2-110(C)(1)
NMBBULL Vol. 24, No. 24, June 13, 1985

Conduct resulting in Disciplinary Notice:

1) A judge complained that an attorney did not appear at a hearing in a child custody suit. When contacted by the disciplinary board, the lawyer explained that the hearing involved a post decree relief situation, and that he had previously represented the client in a change of custody action that had been completed over a year ago. Upon receiving the new motion and notice of hearing, the lawyer contacted his former client, who promised to set up an appointment but failed to do so. As a result of his client's inaction, the lawyer assumed that the client had hired someone else or was handling the matter pro se. The lawyer received a letter of caution saying that he should have taken appropriate steps to advise all concerned of his intent to withdraw after it became apparent that his client no longer desired his services.

Disciplinary Note

See rule 16-301, 16-302, 16-804(D)

See old rules 1-102(A)(5), 2-110(A)(2), 7-101(A)(3), 7-102(A)(1)

NMBBULL Vol. 24, No. 10, Mar. 7, 1985

Conduct resulting in Disciplinary Notice:

1) 16-116(D) An attorney asserted a lien against a client's file until a remaining fee of \$47 was paid. The client was unable to understand what services or costs the remaining \$47 covered, and the dispute was referred to the Disciplinary Board. Upon being contacted by the Board, the attorney became extremely annoyed and further demanded payment for his time spent communicating with disciplinary counsel (an additional \$100). The Board advised that while such conduct was not strictly illegal, a client's request for an explanation of charges is reasonable, and if taken to an extreme such conduct could constitute a breach of an attorney's duty to protect his client's interests upon termination of representation.

Disciplinary Note

See rules 16-102(A), 16-105(A)

See old rules 2-106(A), 2-110(C)(1)(d)

NMBBULL Vol. 23, No. 11, Mar. 15, 1984

Conduct resulting in Disciplinary Notice:

1) 16-116(B)(5) When an attorney is working under a contingency fee arrangement and a client refuses to accept a generous and reasonable offer of settlement, the attorney should seek leave to withdraw from representation on grounds that the client's actions were rendering representation unreasonably difficult and seek compensation in quantum meruit.

16-117: Sale of a law practice.

A lawyer or a law firm may sell or purchase a law practice, or a portion thereof, including good will, if the following conditions are satisfied:

- A. Sixty (60) days written notice is given to each of the seller's clients for whom the attorney is performing ongoing legal services at the time of the sale or for whom the attorney has performed any legal services within eighteen (18) months prior to the date of sale. The notice shall advise the client of:
- (1) the seller's complete or partial cessation of practice, whichever is applicable, and the proposed sale;
 - (2) the terms of any proposed change in the fee arrangement authorized by Paragraph C of this rule; and
 - (3) the client's right to retain other counsel or to take possession of the file. For good cause shown the district court, upon application, may enter an order reducing the sixty (60) day time period.
- B. The sale of the practice of law by the seller shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the seller's principal office is located. The notice shall contain the names, addresses and telephone numbers of the seller and the purchaser and the address where any person entitled to do so may claim the files within thirty (30) days after the final date of publication.
- C. The fees charged clients shall not be increased by reason of the sale. The purchaser may, however, refuse to undertake the representation unless the client consents to a fee increase provided the fee shall not exceed the fee charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations. No change in fee arrangement shall be made with respect to matters that are reasonably expected to be completed within one hundred eighty (180) days after the sale and the client is unable to obtain other counsel.

D. Each lawyer participating in the sale of a law practice, or a portion thereof, shall remain subject to the Rules of Professional Conduct that apply when a lawyer terminates the representation of a client or involves another lawyer in the representation of a client.

16-201:Advisor.

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

16-202:Intermediary.

If approved by each client in writing:

A. **Intermediary between clients.** A lawyer may act as intermediary between clients if:

- (1) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's consent to the common representation;
- (2) the lawyer reasonably believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and
- (3) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

B. Consultation with each client. While acting as intermediary, the lawyer shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

C. Withdrawal as intermediary. A lawyer shall withdraw as intermediary if any of the clients so request, or if any of the conditions stated in Paragraph A are no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

16-203: Evaluation for use by third persons.

- A. Limitations. A lawyer may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:
 - (1) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and
 - (2) the client consents after consultation.
- B. Protected information. Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 16-106.

16-300: Prohibition against invidious discrimination.

In the course of any judicial or quasi-judicial proceeding before a tribunal, a lawyer shall refrain from intentionally manifesting, by words or conduct, bias or prejudice based on race, gender, religion, national origin, disability, age, or sexual orientation against the judge, court personnel, parties, witnesses, counsel or others. This rule does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age or sexual orientation is material to the issues in the proceeding.

16-301: Meritorious claims and contentions.

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Rutledge, Thomas A.

Quickel, William

See rules 16-404, 16-501(B)(1), 16-804(D)
Disciplinary Nos. 09-97-333 and 09-97-334 (consolidated)
NMBBULL Vol. 38, No. 10, Mar 11, 1999

Conduct resulting in rule violation:

1) Prosecutors filed frivolous motion, with no sound basis in fact or law, attacking partiality of a judge who had recommended that criminal charges be dismissed. The complaint alleged that the judge was biased against the police due to the judge's relatives having had contacts with the police, and was later shown to be completely without merit.

Disciplinary Note

See old rule 7-102(A)(1)

NMBBULL Vol. 25, No. 26, June 26, 1986

Conduct resulting in Disciplinary Notice:

1) Two lawyers, incensed at having been cut off from being served more alcohol by a restaurant manager for fear of dram shop liability, threatened to bring a lawsuit against one of the restaurant employees. There was absolutely no legal basis for the threat. The Disciplinary Board characterized the attorneys' conduct as 'obnoxious and immature', and said that it came close to violating the prohibition against engaging in conduct that serves merely to harass or embarrass another.

Disciplinary Note

See rules 16-102(D), 16-804

See old rules 1-102(A)(5), 7-102(A)(1), 7-102(A)(8)

NMBBULL Vol. 25, No. 1, June 2, 1986

Conduct resulting in Disciplinary Notice:

1) In a small New Mexico town, an assistant district attorney conditioned the offering of a plea agreement on the defendant's making a \$2500 contribution to an undercover narcotics operation. The \$2500 was not a condition of probation, would not have been a matter of record with the court, and would have at no point been subject to judicial scrutiny. When the defendant refused to pay, the attorney proceeded to offer complete immunity to co-defendants in exchange for their testimony against the defendant. There was no legal basis for the action. The Disciplinary Board described this as 'highly unethical', 'bordering on extortion', and conduct that could easily be construed as vindictive and taken out of spite or in retribution.

Disciplinary Note

See rule 16-404

See old rules 7-102(A)(1), 7-105(A), 7-109(A), 7-109(B)

NMBBULL Vol. 24, No. 23, June 7, 1985

Conduct resulting in Disciplinary Notice:

1) The attorney of a man who had been arrested and charged with criminal sexual contact with a minor became convinced that the charges against his client were groundless and might have been instigated by the mother of the alleged victim, who bore a grudge against his client. During the course of the criminal proceeding, the attorney notified the district attorney's office and the mother of the alleged victim that he intended to pursue tort actions against them for false arrest, negligent prosecution, and defamation. The district attorney wondered if this was prohibited by the Code of Professional Responsibility, and contacted the disciplinary board to investigate. A reviewing officer found that an action of this sort is not per se violative of any rule, but that it could be if the threatened lawsuits had no basis in fact or law. The officer found that the facts of this case could have conceivably given rise to a good faith basis for a civil cause of action. Further, no authority was found for the proposition that the attorney had to wait until the criminal proceeding was resolved before notifying the potential defendants in the civil action that he intended to proceed against them.

Disciplinary Note

See rule 16-116(D), 16-302, 16-804(D)

See old rules 1-102(A)(5), 2-110(A)(2), 7-101(A)(3), 7-102(A)(1)

NMBBULL Vol. 24, No. 10, Mar. 7, 1985

Conduct resulting in Disciplinary Notice:

1) An attorney became irritated by opposing counsel's refusal to agree to the entry of a partial decree of divorce prior to being able to review certain financial records, and so refused to engage in any further informal discovery, necessitating numerous court hearings. The Disciplinary Board advised that while such conduct is not strictly illegal, if taken to an extreme it could constitute harassment and thus violate the prohibition against engaging in frivolous controversy.

16-302:Expediting litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Costa, Maria R.

See rules 16-101, 16-103, 16-104(A), 16-303(A)(1), 16-304(C), 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 08-98-353

Reprimand Issued: August 17, 2001

Conduct resulting in rule violation:

1) Delayed for almost a year in responding to opposing counsel's request for discovery, eventually causing her client's cause of action to be dismissed due to lawyer's inaction.

Schoeppner, John J.

See rules 16-101, 16-103, 16-104, 16-105(C), 16-108(E), 16-116(D), 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 02-99-370

NMBBULL Vol. 39, No. 49, Dec 7, 2000

Conduct resulting in rule violation:

1) Twice sought continuance of trial of a public defender client who was being held in custody, causing client to remain in custody for several additional months before trial, despite awareness that continuance was against client's interests.

Juarez, Anna L.

See rules 16-103, 16-104(A), 16-105(A), 16-116(D), 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 04-99-371

NMBBULL Vol. 39, No. 30, Jul 27, 2000

Conduct resulting in rule violation:

1) After an unsuccessful attempt to serve complaint on the date that the lawyer had told the client it would be served, delayed for over a month without trying again.

Fleming, William C.

See rules 16-103, 16-104(A), 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 10-99-377

NMBBULL Vol. 39, No. 30, Jul 27, 2000

Conduct resulting in rule violation:

- 1) Had divorce hearing continued without client's consent and against client's interest
- 2) Delayed preparing final divorce papers for several months

Traub, Rosemary

See rules 16-101, 16-103, 16-108(E), 16-116(A), 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 02-93-228

NMBBULL Vol. 34, No. 35, Aug 31, 1995

Conduct resulting in rule violation:

- 1) Failure to initiate proceedings to obtain interim support payments in a divorce action
- 2) Failure to audit corporate assets held in community property in divorce action despite client's concern that her former spouse was dissipating the assets

Worley, Gregory D.

See rules 16-101, 16-103, 16-801(B), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 07-93-241

NMBBULL Vol. 33, No. 25, Jun. 23, 1994

Conduct resulting in rule violation:

1) Despite having filed a timely Notice of Appeal, lawyer failed to file a docketing statement for his client in a criminal case.

Kelly, Leo Charles

See rules 16-101, 16-103

See old rules 6-101(2), 6-101(A)(3), 7-103(A)(3)

Disciplinary Nos. 06-86-86 and 06-86-89

NMBBULL Vol. 27, No. 27, July 7, 1988

Conduct resulting in rule violation:

1) Failure to timely comply with an order compelling discovery, and failure to seek an extension of the appeal deadline, resulted in client's lawsuit being dismissed.

Tapia, Joseph M.

See rules 16-116(A)(3), 16-116(D), 16-304(C), 16-801(B)

See old rules 1-101(C), 2-110(A)(2), 2-110(B)(4), 7-101(A)(1), 7-106(C)(7)

Disciplinary No. 12-85-73

NMBBULL Vol. 25, No. 42, Oct. 16, 1986

Conduct resulting in rule violation:

1) After promptly recording and filing complaint on a mechanic's lien, lawyer delayed for three months before issuing summons, and took no other concrete action for a total of six months, except for negotiating a settlement offer that was rejected by the client, when client had made clear from the outset that he wanted the matter handled quickly.

Disciplinary Note

See rule 16-116(D), 16-301, 16-804(D)

See old rules 1-102(A)(5), 2-110(A)(2), 7-101(A)(3), 7-102(A)(1)

NMBBULL Vol. 24, No. 10, Mar. 7, 1985

Conduct resulting in Disciplinary Notice:

1) An attorney asserted a lien against a client's file until a remaining fee of \$47 was paid. The client was unable to understand what services or costs the remaining \$47 covered, and the dispute was referred to the Disciplinary Board. Upon being contacted by the Board, the attorney became extremely annoyed and further demanded payment for his time spent communicating with disciplinary counsel (an additional \$100). The Board advised that while such conduct was not strictly illegal, a client's request for an explanation of charges is reasonable, and if taken to an extreme such conduct could constitute a breach of an attorney's duty to act in a fashion consistent with the interests of his client.

16-303:Candor toward the tribunal.

A. **Duties.** A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal;
- (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
- (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

B. Compliance with rule. The duties stated in Paragraph A continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 16-106.

C. Refusal to offer evidence. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

D. Ex parte proceedings; lawyer's duty. In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

E. Limited entry of appearance; lawyer's duty. In all proceedings where a lawyer appears for a client in a limited manner, that lawyer shall disclose to the court the scope of representation.

Costa, Maria R.

See rules 16-101, 16-103, 16-104(A), 16-302, 16-304(C), 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 08-98-353

Reprimand Issued: August 17, 2001

Conduct resulting in rule violation:

1) 16-303(A)(1) In a written motion to reinstate cause of action following dismissal caused by lawyer's failure to comply with a court order compelling discovery, lawyer falsely represented to the court that the discovery documents at issue had been prepared and were ready for delivery to opposing counsel, when in fact this was not true.

Baca, Henry J.

See rule 16-804(C)

No disciplinary number given

NMBBULL Vol. 38, No. 9, Mar. 4, 1999

Conduct resulting in rule violation:

- 1) 16-303(A)(1) To aid a former client's Motion to Reconsider Final Judgment due to confusion regarding retention of counsel, lawyer deliberately made a false statement in an affidavit that the client had provided him a \$200 check for legal consultation in January 1996. Despite initially denying to disciplinary counsel that this client had ever retained him, lawyer later admitted receiving the \$200 check in August 1996 and knowingly helping his client deceive the court by misrepresenting this date in the affidavit.
- 2) 16-303(A)(4) To aid a former client's Motion to Reconsider Final Judgment due to confusion regarding retention of counsel, lawyer deliberately made a false statement in an affidavit that the client had provided him a \$200 check for legal consultation in January 1996. Lawyer later admitted that he actually received the check in August 1996 and was aware that it was post-dated back to January 1996 for the purpose of deceiving the court.

Klein, Don

See rules 16-101, 16-102, 16-103, 16-104, 16-304, 16-803(D), 16-804(H)

Disciplinary No. 07-92-221

NMBBULL Vol. 34, No. 26, June 29, 1995

See also NMBBULL Vol. 34, No. 20, May 18, 1995

Conduct resulting in rule violation:

1) Misled the court by filing a petition for appointment of guardianship of client's minor child without informing court that matter had already been litigated and guardianship orders entered by another judge in a different district.

Butler, Wycliffe V.

See rules 16-304(C), 16-804(H)

See old rules 1-102(A)(6), 7-102(A)(3), 7-106(C)(7)

Disciplinary No. 09-84-52

[NMBBULL Vol. 24, No. 20, May 16, 1985](#)

Conduct resulting in rule violation:

- 1) 16-303(D) At an ex-parte hearing, failed to advise judge that opposing party was represented by counsel and had requested notice of hearing.
- 2) 16-303(D) At an ex-parte hearing to seek a restraining order, failed to advise judge that photos of injuries were over three months old.
- 3) 16-303(D) At an ex-parte hearing to seek a restraining order, failed to advise judge that opposing party had not attempted to contact his client since the incident in question.

Disciplinary Note

See rules 16-102(D), 16-804(A), 16-804(C)
NMBBULL Vol. 28, No. 19, May 11, 1989

Conduct resulting in Disciplinary Notice:

1) 16-303(D) The concept of 'judge shopping' is within the jurisdiction of the Disciplinary Board when the conduct involves dishonesty. Refiling a matter in an attempt to obtain a different judge, and failure to disclose that the matter has already been decided upon, constitutes a violation of the requirement that in an ex-parte proceeding a lawyer must inform the tribunal of all facts, whether or not they are adverse to his client's interests.

16-304: Fairness to opposing party and counsel. A lawyer shall not:

16-304: Fairness to opposing party and counsel. A lawyer shall not:

- A. unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- B. falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- C. knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- D. in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- E. in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness or state a personal opinion, not supported by the evidence as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- F. request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1) the person is a relative or an employee or other agent of a client; and
 - (2) the lawyer reasonably believes that the person's interest will not be adversely affected by refraining from giving such information.

16-304: Fairness to opposing party and counsel. A lawyer shall not:

Costa, Maria R.

See rules 16-101, 16-103, 16-104(A), 16-302, 16-303(A)(1), 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 08-98-353

Reprimand Issued: August 17, 2001

Conduct resulting in rule violation:

1) 16-304(C) Without justification failed to comply with opposing counsel's request for discovery, even after being compelled to do so by an order of the court.

16-304: Fairness to opposing party and counsel. A lawyer shall not:

Klein, Don

See rules 16-101, 16-102, 16-103, 16-104, 16-303, 16-803(D), 16-804(H)

Disciplinary No. 07-92-221

NMBBULL Vol. 34, No. 26, June 29, 1995

See also NMBBULL Vol. 34, No. 20, May 18, 1995

Conduct resulting in rule violation:

1) Misled the court by filing a petition for appointment of guardianship of client's minor child without informing court that matter had already been litigated and guardianship orders entered by another judge in a different district.

16-304: Fairness to opposing party and counsel. A lawyer shall not:

Ellis, James C.

See rules 16-305(B), 16-804(D), 16-804(H)

Disciplinary No. 10-91-212

NMBBULL Vol. 31, No. 20, May 14, 1992

Conduct resulting in rule violation:

- 1) 16-304(C) In 'Emergency Motion for Immediate Custody and/or Visitation' regarding a two year old child, contrary to Rule of Civil Procedure 1-066, lawyer failed to allege any facts showing that immediate or irreparable harm would result if transfer of custody were to wait until a hearing could be held.
- 2) 16-304(C) Failure to notify opposing counsel before seeking and obtaining an order during an improper ex-parte communication with a judge providing for the immediate change in custody of a two year old child.

16-304: Fairness to opposing party and counsel. A lawyer shall not:

Norton, Richard E.

See rules 16-102(A), 16-109(A)

Disciplinary No. 08-89-171

NMBBULL Vol. 29, No. 21, May 24, 1990

Conduct resulting in rule violation:

1) 16-304(C) Failure to comply with court order directing that lawyer surrender all documents, files, funds, and other items belonging to the lawyer's corporate client, without any open refusal based on an assertion that no valid obligation existed.

16-304: Fairness to opposing party and counsel. A lawyer shall not:

Privette, H. Gregg

See rules 16-101, 16-103, 16-804(D), 16-804(H)

See old rules 1-102(A)(5), 1-102(A)(6), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), 7-106(C)(7)

Disciplinary No. 06-86-87

NMBBULL Vol. 26, No. 15, April 9, 1987

Conduct resulting in rule violation:

1) Lawyer filed both Notice of Appeal and docketing statement approximately three weeks later than required; also, docketing statement was so severely deficient in terms of content as to warrant the conclusion that lawyer was either oblivious to or intentionally disregarded the Rules of Appellate Procedure.

16-304: Fairness to opposing party and counsel. A lawyer shall not:

Tapia, Joseph M.

See rules 16-116(A)(3), 16-116(D), 16-302, 16-801(B)

See old rules 1-101(C), 2-110(A)(2), 2-110(B)(4), 7-101(A)(1), 7-106(C)(7)

Disciplinary No. 12-85-73

NMBBULL Vol. 25, No. 42, Oct. 16, 1986

Conduct resulting in rule violation:

1) 16-304(C) Failure to timely file a brief-in-chief, and repeated failure to respond to Appellate Court's Orders to Show Cause as to why lawyer should not be held in contempt for failing to timely file the same brief-in-chief.

16-304: Fairness to opposing party and counsel. A lawyer shall not:

Butler, Wycliffe V.

See rules 16-303(D), 16-804(H)

See old rules 1-102(A)(6), 7-102(A)(3), 7-106(C)(7)

Disciplinary No. 09-84-52

NMBBULL Vol. 24, No. 20, May 16, 1985

Conduct resulting in rule violation:

1) 16-304(C) Willfully failed to notify opposing counsel of upcoming hearing, in violation of New Mexico Rules of Civil Procedure Rule 66(b).

16-304: Fairness to opposing party and counsel. A lawyer shall not:

Disciplinary Note

See rules 16-102(D), 16-804(C)

See old rules 1-102(A)(4), 7-102(A)(6)

NMBBULL Vol. 23, No. 24, June 14, 1984

Conduct resulting in Disciplinary Notice:

1) 16-304(B) An attorney wrote to his client to inform her that a hearing had been scheduled in a civil case against her. The client then called the attorney to explain that she would be out of state and unable to attend the hearing. After the client did not appear at two hearings, a default judgment was entered against her. Several months later the client called the attorney and asked if there was anything he could do. The attorney then drafted a motion to set aside the default judgment which stated that the client had no notice of the hearing and that due to an error of the postal service the attorney had not known of his client's whereabouts. The client refused to sign the motion because she felt it was inaccurate and contacted Disciplinary Counsel. At the disciplinary hearing, the attorney explained that by notice he had meant legal notice. The Hearing Committee accepted his explanation and found that there was no intent to defraud, that no false evidence had been created, and the charges were dismissed. The Committee stated, however, that had the motion been signed by the client and presented to the court, there would have been misconduct warranting disciplinary action.

16-305: Impartiality and decorum of the tribunal.

A lawyer shall not:

- A. seek to influence a judge, juror, prospective juror or other official by means prohibited by law, these rules or the Code of Judicial Conduct;
- B. communicate ex parte with such a person except as permitted by law; or
- C. engage in conduct intended to disrupt, and which in fact disrupts, a tribunal.

Ellis, James C.

See rules 16-304(C), 16-804(D), 16-804(H)

Disciplinary No. 10-91-212

NMBBULL Vol. 31, No. 20, May 14, 1992

Conduct resulting in rule violation:

1) 16-305(B) During an ex-parte communication in which a judge's signature on an order was sought and obtained, lawyer violated Rule of Civil Procedure 1-066 and also failed to advise the judge of all material facts that would have enabled him to make an informed decision. At that time, the judge felt that the lawyer had given him the impression that opposing counsel had no objections to his signing the order. The next day, upon learning from opposing counsel that she had not agreed to waive the usual notice requirement for a hearing and was entirely unaware that the order had provided for the immediate change in custody of a two year-old child, the judge vacated the order immediately.

Cherryholmes, Tom

See rules 16-804(B), 16-804(D), 16-804(H)

See old rules 1-102(A)(5), 1-102(A)(6), 7-102(A)(8), 7-106(C)(6)

Disciplinary No. 01-85-54

[NMBBULL Vol. 24, No. 42, Oct. 17, 1985](#)

Conduct resulting in rule violation:

1) 16-305(C) Immediately following a judge's departure from the bench after declaring a recess during a criminal trial, lawyer made an obscene remark directed at the judge that was loud enough to be heard in the spectator's section of the courtroom.

Disciplinary Note

See rule 16-402

See old rules 7-101(A)(1), 7-104(A)(1), 7-110(B)

NMBBULL Vol. 27, No. 10, Mar. 10, 1988

Conduct resulting in Disciplinary Notice:

1) Action of a Prosecuting Attorney in making ex parte contact with the judge before whom the case was pending to obtain a search warrant without at any point advising the defendant's attorney was permitted by law and the Rules of Professional Conduct.

16-306: Trial publicity.

- A. **Extrajudicial statements.** A lawyer shall not make any extrajudicial or out-of-forum statement in a criminal proceeding that may be tried to a jury that the lawyer knows or reasonably should know:
 - (1) is false; or
 - (2) creates a clear and present danger of prejudicing the proceeding.
- B. **Attorney's obligations with respect to other persons.** A lawyer shall make reasonable efforts to insure compliance with this rule by associated attorneys, employees and members of law enforcement and investigative agencies.

Disciplinary Note

See old rule 7-107(B)(6)

NMBBULL Vol. 24, No. 2, Jan. 10, 1985

Conduct resulting in Disciplinary Notice:

1) An attorney who represented a defendant in a criminal case gave a statement to a newspaper reporter shortly after the client's indictment by a Grand Jury. The statement indicated that the attorney had reviewed the police file and record of the Grand Jury proceedings but felt that no crime had been committed by the client. Wary of public statements that may have prejudiced the administration of justice, the Disciplinary Board cautioned the attorney that under Rule 7-107(B)(6) of the Code of Professional Responsibility, attorneys were obligated to refrain from publicly stating their opinions regarding the guilt or innocence of the accused.

16-307:Lawyer as witness.

- A. **Necessary witness.** A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:
- (1) the testimony relates to an uncontested issue; or
 - (2) the testimony relates to the nature and value of legal services rendered in the case.
- B. **Associate lawyer.** A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 16-107 or 16-109.

16-308: Special responsibilities of a prosecutor.

The prosecutor in a criminal case shall:

- A. refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- B. prior to appearing in a court proceeding where a defendant appears without counsel, make reasonable efforts to assure that the accused has been advised of the right to and the procedure for obtaining counsel, and has been given reasonable opportunity to obtain counsel;
- C. not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- D. make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all reasonably relevant mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and
- E. exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 16-306.

16-309: Advocate in nonadjudicative proceedings.

16-309: Advocate in nonadjudicative proceedings.

A lawyer representing a client before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Paragraphs A through C of Rules 16-303 and 16-304 and with Rule 16-305.

16-401: Truthfulness in statements to others.

In the course of representing a client a lawyer shall not knowingly:

- A. make a false statement of material fact or law to a third person; or
- B. fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 16-106.

Ellis, James C.

See rules 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 89-10-175

NMBBULL Vol. 29, No. 39, Sept. 27, 1990

Conduct resulting in rule violation:

1) 16-401(A) In an attempt to obtain information about a doctor he was suing, lawyer improperly had subpoena duces tecum issued to third party hospital where the doctor also had work privileges. When contacted by the attorney for the third party hospital, lawyer misrepresented that subpoena had been issued in connection with a deposition, when this was not true. Further, the lawyer misrepresented that the doctor's lawyer had notice of the subpoena, when this was not true. Lastly, the lawyer misrepresented that the doctor's lawyer had told him that he had no objection to the lawyer reviewing the doctor's confidential file, when this was not true.

Disciplinary Note

See rules 16-403, 16-404, 16-804(D)
NMBBULL Vol. 36, No. 34, Aug. 21, 1997

Conduct resulting in Disciplinary Notice:

1) Letters sent by personal injury attorneys to insureds regarding failed negotiations with insurance companies and saying that insurance companies, by refusing to settle, were acting in their own interests at the insured's expense and could be sued for bad faith were potential violations of Rule 16-401. Unless the facts of a particular case genuinely warrant such a suit, this could be considered knowingly making a false statement of fact or law to a third person.

16-402: Communication with person represented by counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so. Except for persons having a managerial responsibility on behalf of the organization, an attorney is not prohibited from communicating directly with employees of a corporation, partnership or other entity about the subject matter of the representation even though the corporation, partnership or entity itself is represented by counsel.

Avallone, Anthony F.

Disciplinary No. 04-93-235

NMBBULL Vol. 32, No. 36, Sept. 9, 1993

Conduct resulting in rule violation:

1) Despite knowledge that defendant bank and its executive officers were represented by legal counsel, lawyer wrote directly to the bank's president to threaten legal action if his client's request was not satisfied within one week.

Disciplinary Note

See rule 16-305

See old rules 7-101(A)(1), 7-104(A)(1), 7-110(B)

NMBBULL Vol. 27, No. 10, Mar. 10, 1988

Conduct resulting in Disciplinary Notice:

1) Communication by Prosecuting Attorney, in response to criminal defendant's inquiries, saying that defendant had been directed by police to go to the police station for the purpose of giving blood, saliva, and hair samples in accordance with a search warrant, and further that the search warrant was an order of the court, that defendant would have to comply, and that defendant could not call his lawyer, was authorized by law. While the Disciplinary Board noted that the United States Supreme Court has held that there is no right to counsel during the execution of a search warrant, the Board also strongly cautioned prosecuting attorneys that any further communication could have readily violated the defendant's constitutional rights, the Rules of Professional Responsibility, or the Rules Governing the Practice of Law.

16-403: Dealing with unrepresented person.

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Disciplinary Note

See rules 16-401, 16-404, 16-804(D)
NMBBULL Vol. 36, No. 34, Aug. 21, 1997

Conduct resulting in Disciplinary Notice:

1) Letters sent by personal injury attorneys to insureds suggesting that an insurance company's failure to settle was done in bad faith and the possible basis for a lawsuit by the insured could be a violation of rule 16-403 because it creates the impression that the lawyer is acting in the insured's interest, rather than in the interest of his client.

16-404:Respect for rights of third persons.

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Rutledge, Thomas A.

Quickel, William

See rules 16-301, 16-501(B)(1), 16-804(D)
Disciplinary Nos. 09-97-333 and 09-97-334 (consolidated)
NMBBULL Vol. 38, No. 10, Mar 11, 1999

Conduct resulting in rule violation:

1) Prosecutors filed a frivolous motion attacking the partiality of a judge that had no justification in law or fact and no substantial purpose other than to embarrass the judge and his family.

Kisluk, Dick

See rules 16-503(B), 16-503(C), 16-803(D), 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 03-89-163

NMBBULL Vol. 28, No. 35, Aug. 31, 1989

Conduct resulting in rule violation:

1) Following two unrelated disciplinary investigations that resulted in complaints against him being dismissed, lawyer sent unprofessional and offensive cards, presumably in retaliation, to the former clients that had filed the complaints.

Disciplinary Note

See rules 16-401, 16-403, 16-804(D)
NMBBULL Vol. 36, No. 34, Aug. 21, 1997

Conduct resulting in Disciplinary Notice:

1) Letters sent by personal injury attorneys to insureds suggesting that an insurance company's failure to settle was done in bad faith and the basis of a possible lawsuit by the insured appeared designed to frighten the insured into believing that the insurance company had betrayed them and to encourage the insured to threaten the insurance company with a lawsuit. Such conduct, if it had no genuine basis in fact or law, could be construed as having no other purpose than to burden the insured and possibly the insurance company.

Disciplinary Note

See rule 16-301

See old rules 7-102(A)(1), 7-105(A), 7-109(A), 7-109(B)

NMBBULL Vol. 24, No. 23, June 7, 1985

Conduct resulting in Disciplinary Notice:

1) The attorney of a man who had been arrested and charged with criminal sexual contact with a minor became convinced that the charges against his client were groundless and might have been instigated by the mother of the alleged victim, who bore a grudge against his client. During the course of the criminal proceeding, the attorney notified the district attorney's office and the mother of the alleged victim that he intended to pursue tort actions against them for false arrest, negligent prosecution, and defamation. The district attorney wondered if this was prohibited by the Code of Professional Responsibility, and contacted the disciplinary board to investigate. A reviewing officer found that an action of this sort is not per se violative of any rule, but that it could be if the threatened lawsuits had no basis in fact or law. The officer found that the facts of this case could have conceivably given rise to a good faith basis for a civil cause of action. Further, no authority was found for the proposition that the attorney had to wait until the criminal proceeding was resolved before notifying the potential defendants in the civil action that he intended to proceed against them.

16-501: Responsibilities of a partner or supervisory lawyer.

- A. **Compliance with rules.** A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- B. **Responsibility for other lawyer's violations.** A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rutledge, Thomas A.

See rules 16-301, 16-404, 16-804(D)

Disciplinary No. 09-97-333

NMBBULL Vol. 38, No. 10, Mar 11, 1999

Conduct resulting in rule violation:

1) 16-501(B)(1) Lawyer serving as prosecutor ratified conduct of subordinate lawyer who filed a frivolous motion attacking the partiality of a judge. Complaint was later shown to be completely without merit.

Disciplinary Note

See rules 16-503(B), 16-503(C), 16-505(A), 16-505(B), 16-705(B)
NMBBULL Vol. 40, No. 18, May 3, 2001

Conduct resulting in Disciplinary Notice:

1) Supervisory lawyer who fails to make reasonable efforts to insure that unauthorized persons do not practice law in this state may violate prohibition against assisting in the unauthorized practice of law, even if the unauthorized person is licensed in another state or even though there was no direction, ratification or knowledge of the violation.

16-502: Responsibilities of a subordinate lawyer.

- A. **Responsibility for own actions.** A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.
- B. **Arguable question of duty.** A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

16-503: Responsibilities regarding nonlawyer assistants.

- With respect to a nonlawyer employed or retained by or associated with a lawyer:
- A. a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
 - B. a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Kisluk, Dick

See rules 16-404, 16-803(D), 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 03-89-163

NMBBULL Vol. 28, No. 35, Aug. 31, 1989

Conduct resulting in rule violation:

- 1) 16-503(B) After admitting that he had sent one offensive card to a former client that had filed a complaint with the disciplinary board against him, lawyer denied having sent second and third cards of a similar nature to different individuals with whom he had similarly hostile relationships, implying instead that his former secretary or other employee must have sent the cards.
- 2) 16-503(C) Lawyer implied that his former secretary or some other employee must have sent two offensive cards to persons with whom he had hostile relationships, however, the evidence showed that the cards had been purchased by a check drawn from his office account and signed by the lawyer, and that the cards had been sent from the lawyer's office.

Disciplinary Note

See rules 16-501, 16-505(A), 16-505(B), 16-705(B)
NMBBULL Vol. 40, No. 18, May 3, 2001

Conduct resulting in Disciplinary Notice:

- 1) 16-503(B) Partners and supervisory lawyers who do not use reasonable care to insure that their unlicensed employees or associates do not engage in the practice of law may violate the prohibition against assisting in the unauthorized practice of law.
- 2) 16-503(C) Failure to use reasonable care to insure against an unlicensed employee or associate engaging in the unauthorized practice of law may occur even in the absence of direction, knowledge, or ratification of violation, and may constitute a violation of the prohibition against assisting in the unauthorized practice of law.

Disciplinary Note

See rule 16-105

NMBBULL Vol. 35, No. 17, Apr. 25, 1996

Conduct resulting in Disciplinary Notice:

1) Paralegal and legal assistant fees should be included by the attorney within the contingency fee agreement, and not charged as a separate cost.

16-504: Professional independence of a lawyer.

- A. **Fee sharing.** A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
- (1) an agreement by a lawyer with the lawyer's firm, partner or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
 - (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and
 - (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.
- B. **Partnerships with nonlawyers.** A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- C. **Influence by nonclient.** A lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- D. **Professional corporations and associations.** A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
 - (2) a nonlawyer is a corporate director or officer thereof; or
 - (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

16-505: Unauthorized practice of law. A lawyer shall not:

16-505:Unauthorized practice of law. A lawyer shall not:

- A. practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction;
- B. assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law;
- C. employ or continue the employment of a disbarred or suspended lawyer as an attorney; or
- D. 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 employment by order of the Supreme Court or the disciplinary board.

16-505: Unauthorized practice of law. A lawyer shall not:

Disciplinary Note

See rules 16-501, 16-503(B), 16-503(C), 16-705(B)
NMBBULL Vol. 40, No. 18, May 3, 2001

Conduct resulting in Disciplinary Notice:

- 1) 16-505(A) Being subject to the jurisdiction of a disciplinary tribunal in New Mexico is not the same as being admitted to practice law in this state.
- 2) 16-505(B) Lawyers are prohibited from assisting in the unauthorized practice of law regardless of whether the person whom they assist is licensed to practice law in another state.

16-506:Restrictions on right to practice.

A lawyer shall not participate in offering or making:

- A. a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- B. an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

16-601:Pro bono public service.

A lawyer should aspire to render at least fifty (50) hours of pro bono publico legal services per year. In fulfilling this aspiration, the lawyer may:

- A. provide a substantial majority of the fifty (50) hours of legal services without fee or expectation of fee to:
 - (1) persons of limited means; or
 - (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
- B. provide any additional services through:
 - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of the standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
 - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
 - (3) participation in activities for improving the law, the legal system or the legal profession; or
- C. alternatively, fulfill this aspiration by contributing financial support to organizations that provide legal services to persons of limited means, in the amount of three hundred fifty dollars (\$350.00) per year.

16-602:Accepting appointments.

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- A. representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- B. representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- C. the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

16-603: Membership in legal services organization.

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

- A. if participating in the decision would be incompatible with the lawyer's obligations to a client under Rule 16-107; or
- B. where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

16-604: Law reform activities affecting client interests.

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

16-701: Communications concerning a lawyer's services.

- A. **False or misleading statements.** A lawyer shall not, directly or indirectly, make or permit to be made a false or misleading communication in an advertisement or solicitation about the lawyer, the lawyer's services or the services of the lawyer's firm. A false or misleading communication includes, but is not limited to that which:
- (1) contains a material misrepresentation of fact or law; or omits a fact necessary to make the statement considered as a whole not materially misleading;
 - (2) is intended or is likely to create an unjustified expectation, including expectations concerning the results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law or contains a testimonial about, or endorsement of, the lawyer;
 - (3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;
 - (4) contains information based on past successes without a disclaimer that past successes cannot be an assurance of future success because each case must be decided on its own merits; or
 - (5) states or implies that the lawyer is a specialist in any field of law other than as specifically permitted by Rule 16-704 NMRA.
- B. **Other prohibited statements.** A lawyer shall not, directly or indirectly, make or permit to be made any statement in an advertisement or solicitation about the lawyer, the lawyer's services or the services of the lawyer's firm which:
- (1) is intended or is likely to convey the impression that the lawyer is in a position to improperly influence any court, tribunal or other public body or official;
 - (2) fails to contain disclaimers required by these rules;
 - (3) predicts future success, except in direct response to a request from a prospective client;
 - (4) does not disclose the name or names of the lawyer, lawyers or law firm whose services are being advertised; or
 - (5) otherwise violates these rules.
- C. **Prohibited solicitations.** A lawyer may not send or permit to be sent a written communication to a prospective client for the purpose of obtaining professional employment, or engage in the in-person or telephone solicitation of legal business allowed by these rules if:
- (1) the person being solicited has made known a desire not to be solicited by the lawyer;
 - (2) the solicitation involves coercion, duress or harassment;

- (3) the lawyer reasonably should know that the physical, emotional or mental state of the person solicited is such that the person could not exercise reasonable judgment in employing a lawyer; or
- (4) the written communication or other solicitation concerns an action for personal injury or wrongful death or otherwise relates to an accident involving the person to whom the communication is addressed or a relative of that person, unless the accident occurred more than thirty (30) days prior to the mailing or other communication or the communication or solicitation is permitted by Rule 16-703(A) NMRA of these rules. A written communication includes, but is not limited to, any communication by mail or electronic mail.

D. Mandatory disclosure. Except for advertisements sent to existing clients or in direct response to a request from a prospective client or advertisements the contents of which are limited to the information described in Paragraph D of Rule 16-702 NMRA, all advertisements of legal services shall contain the disclosure: "LAWYER ADVERTISEMENT". This disclosure shall be prominently and conspicuously displayed at the beginning of all written advertisements, and in all other media the disclosure shall be at the beginning of the presentation and shall be made in an equally prominent and conspicuous manner. In advertisements in the form of correspondence, the top of the first page of the communication and the outside of the communication shall have printed on it in conspicuous writing the words: "LAWYER ADVERTISEMENT". Attorney internet advertisements, including attorney web pages shall include "LAWYER ADVERTISEMENT" in a location which will assure that it will appear on the first computer screen and on each linked screen that includes any content other than the permissible content described in Paragraph D of Rule 16-702 NMRA of these rules. The words "Lawyer Advertisement" are not required if:

- (1) the advertisement is one described in Subparagraphs (1) through (9) of Paragraph C of Rule 16-707 NMRA;
- (2) the advertisement appears in the yellow pages of the telephone directory, the classified advertising section of a newspaper or other similar publication or section of a publication which consists solely of advertisements;
- (3) the advertisement appears on an outdoor billboard; or
- (4) the advertisement is limited to the permissible content described in Paragraph D of Rule 16-702 NMRA of these rules.

E. Attorney internet listings and web pages. The provisions of this rule apply to lawyer advertisements using the internet or a web page.

Disciplinary Note

See rules 16-108(E), 16-704

NMBBULL Vol. 29, No. 32, Aug. 9, 1990

Conduct resulting in Disciplinary Notice:

- 1) 16-701(A)(1) Advertising that refers to contingent fee arrangements without mentioning the client's liability for court costs is deceptive because it omits a fact necessary to make the statement considered as a whole not materially misleading.
- 2) 16-701(A)(5) Used in an advertisement, the terms 'Divorce Lawyer', 'Personal Injury Attorney', and 'Specialist in Criminal Law' are prohibited because they imply that the attorney is a specialist in a particular area of law.

16-702: Advertising and solicitation.

- A. **Public media advertising.** Subject to the requirements of these rules, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor billboards or signs, radio or television, internet or through other written or electronic communication.
- B. **Record keeping requirements.** The lawyer shall keep a copy or recording of any advertisement or solicitation disseminated to any member of the public, as permitted by these rules, subject to the exemptions stated in Paragraph C of Rule 16-707, together with a written record of each and every dissemination, publication, or broadcast in the lawyer's records for five (5) years following the date of the last publication, broadcast or dissemination.
- C. **Payments for referrals.** A lawyer shall not give anything of value or otherwise provide a benefit to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of the advertising or the reasonable cost of preparing the communication which is permitted by this rule and may pay the usual charges for a not-for-profit lawyer referral service or other legal service organization.
- D. **Permissible content.** A lawyer's advertisement or solicitation may include, but is not limited to, the following information:
 - (1) name, including name of law firm and names of professional associates; addresses and telephone numbers;
 - (2) one or more fields of law in which the lawyer or law firm practices, using commonly accepted and understood definitions and designations, so long as said statements do not improperly suggest specialization or certification except as otherwise provided by these rules;
 - (3) a claim of certification if the requirements in Paragraph D of Rule 16-704 are met;
 - (4) date and place of birth;
 - (5) date and place of admission to bar of state and federal courts;
 - (6) schools attended, with date of graduation, degrees, and other scholastic distinctions;
 - (7) public or quasi-public offices;
 - (8) military service;
 - (9) legal authorships;
 - (10) legal teaching positions;
 - (11) offices and committee assignments in bar associations and court appointed offices and committee assignments;
 - (12) technical and professional licenses;
 - (13) foreign language ability;

- (14) names and addresses of bank references;
- (15) prepaid or group legal services programs in which the lawyer participates;
- (16) whether credit cards or other credit arrangements are accepted;
- (17) office and telephone answering service hours.

E. **Permissible fee information.** Lawyer advertisements or solicitations may contain information about fees for services as follows:

- (1) fee for an initial consultation;
- (2) availability upon request of a written schedule of fees or an estimate of fees to be charged for specific services;
- (3) contingent fee rates, or a statement to the effect that the charging of a fee is contingent on outcome or that the fee will be a percentage of recovery, provided that the statement discloses
 - (a) whether percentages are computed before or after deduction of costs, and
 - (b) specifically states that the client will bear the expenses incurred in the client's case regardless of outcome;
- (4) range of fees for services, provided that the statement discloses that
 - (a) the specific fee within the range which will be charged will vary depending upon the particular matter to be handled for each client and
 - (b) the client is entitled without obligation to an estimate of the fee within the range likely to be charged;
- (5) hourly rate, provided that the statement discloses that
 - (a) the total fee charged will depend upon the number of hours which must be devoted to the particular matter to be handled for each client, and
 - (b) the client is entitled without obligation to an estimate of the fee likely to be charged;
- (6) fixed fees for specific legal services, provided that the statement discloses that the quoted fee will be available only to a client seeking the specific services described;
- (7) the disclosures required by Paragraph E of this rule relating to fees or rates shall be located with and in print size at least equivalent to that used in describing the fee or rate for which the disclosure is required. In a radio or television advertisement, the disclosures shall be presented immediately following the information regarding the fee or rate, shall be in the same form, either spoken or written, as the information regarding the fee or rate and shall be prominent and conspicuous.

16-703: Direct in-person or telephone contact with prospective clients.

16-703: Direct in-person or telephone contact with prospective clients.

A lawyer or lawyer's agent may engage in the in-person or telephone solicitation of legal business, only under the following circumstances:

- A. the prospective client is a relative, or the lawyer has a prior personal, business or professional relationship with the prospective client; or
- B. the communication is made under the auspices of a public or charitable legal services organization or a bona fide political, social, civic, charitable, religious, fraternal, employee or trade organization whose purposes include but are not limited to providing or recommending legal services.

16-704:Communication of fields of practice.

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law as permitted by Subparagraph (2) of Paragraph D of Rule 16-702. A lawyer shall not state or imply that the lawyer is a specialist except as follows:

- A. **Patent practice.** A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation;
- B. **Admiralty practice.** A lawyer engaged in admiralty practice may use the designation "Admiralty", "Proctor in Admiralty" or a substantially similar designation;
- C. **Board recognized specialists.** A lawyer who has complied with the requirements of the New Mexico Board of Legal Specialization to become a board recognized specialist may indicate that he is a board recognized specialist in his areas of specialty; and
- D. **Certification by organization.** A lawyer who is certified in a particular area of the law by an organization other than the New Mexico Board of Legal Specialization may so state so long as such certification is available to all lawyers who meet objective and consistently applied standards relevant in a particular area of the law, and the statement is accompanied by a prominent disclaimer that such certification does not constitute recognition by the New Mexico Board of Legal Specialization, unless the lawyer is also recognized by the board as a specialist in that area of law or the board does not recognize specialization in that area.

Disciplinary Note

See rules 16-108(E), 16-701(A)(1), 16-701(A)(5)
NMBBULL Vol. 29, No. 32, Aug. 9, 1990

Conduct resulting in Disciplinary Notice:

1) Used in an advertisement, the terms 'Divorce Lawyer', 'Personal Injury Attorney', and 'Specialist in Criminal Law' are prohibited because they imply that the attorney is a specialist in a particular area of law.

16-705: Firm names and letterheads.

- A. **Use of trade or firm name.** A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 16-701. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 16-701.
- B. **Multi-jurisdictional law firms.** A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.
- C. **Use of names of lawyers holding public office.** The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.
- D. **Statements about association.** Lawyers may not state or imply that they practice in a partnership or other organization unless that is a fact.

Disciplinary Note

See rules 16-501, 16-503(B), 16-503(C), 16-505(A), 16-505(B)
NMBBULL Vol. 40, No. 18, May 3, 2001

Conduct resulting in Disciplinary Notice:

1) Partners and supervisory lawyers should take reasonable steps to insure that an unlicensed employee's status is properly disclosed to all persons with whom the employee communicates; however, such disclosure is not necessarily a defense if the employee's conduct nonetheless constitutes the practice of law.

16-706:Legal advertising committee.

- A. **Appointment and composition.** There is established a committee to be known as "the Legal Advertising Committee of the Disciplinary Board," referred to below as "the committee", which shall consist of ten members. The Supreme Court shall appoint four lawyer members and four nonlawyer public members of the committee. The president of the state bar shall appoint two lawyer members of the committee.
- B. **Functions.** It shall be the task of the committee to evaluate all advertisements filed with the committee for compliance with the rules governing advertising and solicitation and to provide written advisory opinions concerning compliance to the respective filers; to develop a handbook on advertising for the guidance of and dissemination to members of the State Bar of New Mexico and to recommend to the Supreme Court Standing Committee on Code of Professional Conduct from time to time such amendments to the Rules of Professional Conduct as the committee may deem advisable.
- C. **Powers and duties.** The legal advertising committee shall have the following powers and duties regarding legal advertising:
- (1) to investigate the conduct of any attorney who advertises, initiating an investigation on its own motion or undertaking the same upon complaint by any person;
 - (2) to report the results of their investigation, findings of fact, conclusions and recommendations to the disciplinary counsel only in the event the committee determines there is a violation of the regulations regarding legal advertising;
 - (3) to conduct an annual meeting at a time and place to be determined by the chairman of the committee. The purpose of this meeting will be to review rules, discuss problems, establish performance criteria and discuss any other matters the committee or Supreme Court may deem necessary; and to adopt rules of procedure subject to approval by the Supreme Court.
- D. **Qualifications of public members.** A "nonlawyer public member" is a person who:
- (1) has never engaged in the practice of law;
 - (2) has not graduated from a law school;
 - (3) is not directly employed by a lawyer subject to the jurisdiction of these rules; and
 - (4) does not have any direct significant financial interest in the practice of law.
- E. **Terms of office.** The term of office of members of the committee shall be two (2) years. No member shall serve for more than three consecutive terms.

- F. **Quorum.** Three members of the committee shall constitute a quorum.
- G. **Officers.** The Supreme Court shall designate one attorney member as chair; the president of the State Bar shall designate a vice-chair to act in the absence or disability of the chair. The committee shall, from time to time, designate one of its members to act as secretary. This secretary shall record all plenary proceedings of the committee and keep permanent records of the proceedings.
- H. **Expense reimbursement.** No member of the committee shall receive any compensation, but shall receive per diem and mileage at the same rate as provided for public officials and employees of the state for expenses incurred to attend committee meetings or to perform their duties as committee members.
- I. **Recusal of members.** Members of the committee shall be disqualified from consideration of any advertisement proposed or used by themselves or other lawyers in their firms or immediate family.

16-707: Evaluation by legal advertising committee.

- A. **Advisory opinions.** A lawyer may obtain an advisory opinion concerning the compliance of a contemplated advertisement or written communication in advance of disseminating the advertisement or communication by submitting the material and fee specified in Paragraph D of this rule to the legal advertising committee at least thirty (30) days prior to such dissemination. If the committee finds that the advertisement complies with these rules, the lawyer's voluntary submission shall be deemed to satisfy the filing requirement set forth in Paragraph B of this rule.
- B. **Filing requirements.** Subject to the exemptions stated in Paragraph C of this rule, any lawyer who advertises services through any public media or through any written or electronic communication involving solicitation shall file twelve (12) copies of each such advertisement or revisions thereto with the legal advertising committee for evaluation of compliance with these rules. The copies shall be filed either prior to or concurrently with the lawyer's first dissemination of the advertisement or written communication, and shall be accompanied by the information and fee specified in Paragraph D of this rule. Each submission shall have the names of lawyers responsible for the content of the advertisement and the names of those lawyers for whose benefit the advertisement is disseminated.
- C. **Exemptions.** Exempt from the filing requirements of Paragraph B of this rule and the record keeping requirements of Paragraph B of Rule 16-702 NMRA are:
- (1) advertisements in any of the public media, including the yellow pages of telephone directories and internet listings, that contain no illustrations and no information other than that specifically permitted under Rule 16-702 NMRA. A two dimensional logo is not considered an illustration for purposes of this rule. This exemption extends to television advertisements only if the visual display featured in such advertisements is limited to the words spoken by the announcer;
 - (2) listings or entries in a law list;
 - (3) newsletters mailed only to existing clients or other lawyers;
 - (4) professional announcement cards stating new or changed associations, new offices and similar changes relating to a lawyer or law firm, and which are mailed only to other lawyers, relatives, close personal friends and existing clients;
 - (5) documents prepared in connection with a bidding procedure;
 - (6) firm brochures mailed to a prospective client who requested such a brochure, or with whom a lawyer has a prior personal business or professional relationship;

- (7) advertisements in a publication which is primarily subscribed to by other lawyers;
- (8) advertisements in a publication or program of a governmental entity or a non-profit organization, if limited to information specifically permitted under Paragraph D of Rule 16-702 NMRA, and preceded by the words "SPONSORED BY" or other similar words;
- (9) notices of an upcoming educational seminar or similar presentation which includes information concerning participating lawyers or law firms if limited to information specifically permitted under Paragraph D of Rule 16-702 NMRA and other information describing qualifications of speakers.

D. Contents of filing. A filing with the committee as required by Paragraph B of this rule or as permitted by Paragraph A of this rule shall consist of:

- (1) a copy of the advertisement or communication in the form or forms in which it is to be disseminated (e.g., videotapes, audiotapes, print, photographs of outdoor advertising). Subject to Paragraph H of this rule, advertisements or communications need only be submitted once if the content of the advertisement or communication has not been changed;
- (2) a transcript, if the advertisement or communication is on videotape or audiotape;
- (3) a statement listing all media in which the advertisement or communication will appear, the anticipated frequency of use of the advertisement or communication in each medium in which it will appear and the anticipated time period during which the advertisement or communication will be used;
- (4) print-outs of all internet advertisements; and
- (5) a filing fee of seventy-five dollars (\$75.00) per submission, made payable to the Disciplinary Board. This filing fee shall be used solely to defray the costs of administering Rules 16-701 to 16-707 NMRA.

E. Committee evaluation of advertisements. The committee shall evaluate all advertisements and written communications filed with it pursuant to this rule for compliance with these rules. The committee shall complete its evaluation within thirty (30) days of the date the advertisement or communication was filed with the committee. If during the thirty (30) day review period the committee notifies the lawyer that it has found a reasonable doubt that the advertisement or communication complies with the requirements of these rules or that the committee is unable to obtain a quorum to review the advertisement or communication, the committee shall complete the review as promptly as the circumstances reasonably allow. If the committee does not send any

communication to the lawyer within thirty (30) days, the advertisement will be deemed approved.

- F. **Additional information.** If requested to do so by the committee, the filing lawyer shall submit information to substantiate representations made or implied in that lawyer's advertisement or written communication.
- G. **Finding of non-compliance by committee.** When the committee determines that an advertisement or written communication is not in compliance with the applicable rules, the committee shall advise the lawyer that dissemination or continued dissemination of the advertisement or written communication may result in professional discipline.
- H. **Notice of changed circumstances.** If a substantial change of circumstances occurring subsequent to the committee's evaluation of an advertisement or written communication raises a possibility that the advertisement or communication has become false or misleading as a result of the change in circumstances, the lawyer shall promptly refile the advertisement or a modified advertisement with the committee along with an explanation of the change in circumstances. No fee shall be charged for such re-submission.

16-801: Bar admission and disciplinary matters.

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- A. knowingly make a false statement of material fact; or
- B. fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 16-106.

Olona, Arthur G.

See rules 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 11-98-358

NMBBULL Vol. 41, No. 40, Oct. 3, 2002

Conduct resulting in rule violation:

1) 16-801(B) Failure, on seven occasions, to respond to lawful requests for information from Disciplinary Counsel regarding a complaint that had been filed against him.

Juarez, Anna L.

See rules 16-103, 16-104(A), 16-105(A), 16-116(D), 16-302, 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 04-99-371

NMBBULL Vol. 39, No. 30, Jul 27, 2000

Conduct resulting in rule violation:

1) 16-801(B) Failure to provide information lawfully demanded by the disciplinary authority except for sending a facsimile that was essentially non-responsive.

Fleming, William C.

See rules 16-103, 16-104(A), 16-302, 16-803(D), 16 804(D), 16-804(H)

Disciplinary No. 10-99-377

NMBBULL Vol. 39, No. 30, Jul 27, 2000

Conduct resulting in rule violation:

1) 16-801(B) Failure to respond to four letters from disciplinary authority seeking information regarding client's complaint

Cordova, Camille

See rules 16-101, 16-103, 16-104(A), 16-105(A), 16-116(D), 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 12-95-292

NMBBULL Vol. 37, No. 36, Sept 3, 1998

Conduct resulting in rule violation:

1) 16-801(B) Although responded to client's initial complaint, failed to respond to additional requests for information from the Disciplinary Board

Zorn, Jonathan E.

See rules 16-803(D), 16-804(D)

Disciplinary No. 11-69-309

NMBBULL Vol. 36, No. 19, May 8, 1997

Conduct resulting in rule violation:

1) 16-801(B) Failure to respond to demands for information from the Disciplinary Board, despite being contacted by them numerous times over a period of several months.

Fisk, John W.

See rules 16-103, 16-104, 16-116(D)

Disciplinary No. 10-93-248

NMBBULL Vol. 34, No. 1, Jan. 5, 1995

Conduct resulting in rule violation:

1) 16-801(B) Repeated failure to respond to phone calls and letters from disciplinary counsel, eventually resulting in the charges against the lawyer being deemed admitted.

Worley, Gregory D.

See rules 16-101, 16-103, 16-302, 16-803(D), 16-804(D), 16-804(H)

Disciplinary No. 07-93-241

NMBBULL Vol. 33, No. 25, Jun. 23, 1994

Conduct resulting in rule violation:

1) 16-801(B) Failure to respond to several requests for information from disciplinary counsel followed by a failure to file an Answer once formal disciplinary charges had been filed, resulting in the charges being deemed admitted.

C'deBaca, Michael

See old rule 1-101(C)

Disciplinary No. 07-1986-91

NMBBULL Vol. 26, No. 35, Sept. 3, 1987

Conduct resulting in rule violation:

- 1) Failure to respond to requests for information from disciplinary counsel on several occasions; when finally did respond, answers were late, non-responsive and evasive.
- 2) When disciplinary counsel requested information regarding if lawyer had complied with judge's order to reimburse opposing counsel's client for attorney fees accrued during time wasted when lawyer failed to appear at two hearings, lawyer twice submitted answers that were rude and uncooperative toward the disciplinary process.

James, James D.

See rules 16-104, 16-115(B), 16-116, 16-804(H)

See old rules 1-101(C), 1-102(A)(5), 2-110(A)(3), 6-101(A)(3), 9-102(B)(3), 9-102(B)(4)

Disciplinary No. 12-86-105

NMBBULL Vol. 26, No. 35, Sept. 3, 1987

Conduct resulting in rule violation:

1) Failure, on several occasions, to respond to lawful requests for information from disciplinary counsel regarding a complaint from a former client who was in prison.

Tapia, Joseph M.

See rules 16-116(A)(3), 16-116(D), 16-302, 16-304(C)

See old rules 1-101(C), 2-110(A)(2), 2-110(B)(4), 7-101(A)(1), 7-106(C)(7)

Disciplinary No. 12-85-73

NMBBULL Vol. 25, No. 42, Oct. 16, 1986

Conduct resulting in rule violation:

1) 16-801(B) Repeated failure to respond to requests for information from disciplinary counsel, even though caused in part by the lawyer's failure to update his address of record with the State Bar.

Blackhurst, H. Richard

See rules 16-101, 16-103, 16-804(D), 16-804(H)

See old rules 1-101(C), 1-102(A)(5), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(3)

Disciplinary No. 86-02-1130

NMBBULL Vol. 25, No. 37, Sept. 11, 1986

Conduct resulting in rule violation:

1) After initially requesting extension of time, completely failed to respond to inquiries from Disciplinary Counsel, despite receiving two more letters.

Duran, Peter G.

See rules 16-103, 16-804(D)

See old rules 1-101(C), 1-102(A)(5), 6-101(A)(3), 7-101(A)(1)

Disciplinary No. 06-83-30

NMBBULL Vol. 23, No. 18, May 3, 1984

Conduct resulting in rule violation:

1) 16-801(B) Lawyer ignored or refused to accept three pieces of correspondence from disciplinary counsel regarding complaints from clients for lack of diligence.

16-802:Judicial and legal officials.

- A. Defamation. A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.
- B. Judicial candidates; Code of Judicial Conduct. A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

16-803: Reporting professional misconduct.

- A. **Misconduct of other lawyers.** A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- B. **Misconduct of judges.** A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct or has engaged in conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- C. **Cooperation and assistance; required.** A lawyer shall give full cooperation and assistance to the highest court of the state and to the disciplinary board, hearing committees and disciplinary counsel in discharging their respective functions and duties with respect to discipline and disciplinary procedures. **Confidential information.** This rule does not require a disclosure of information otherwise protected by Rule 16-106.
- D. **Alcohol and substance abuse exception.** The reporting requirements set forth in Paragraphs A and B of this rule do not apply to any communication concerning alcohol or substance abuse by a judge or attorney that is:
- (1) intended to be confidential;
 - (2) made for the purpose of reporting substance abuse or recommending, seeking or furthering the diagnosis, counseling or treatment of a judge or an attorney for alcohol or substance abuse; and
 - (3) made to, by or among members or representatives of a lawyers support group, Alcoholics Anonymous, Narcotics Anonymous or other support group recognized by the Judicial Standards Commission or the Disciplinary Board. Recognition of any additional support group by the Judicial Standards Commission or Disciplinary Board shall be published in the Bar Bulletin.

This exception does not apply to information that is required by law to be reported or to disclosures or threats of future criminal acts or violations of these rules.

Olona, Arthur G.

See rules 16-801(B), 16-804(D), 16-804(H)

Disciplinary No. 11-98-358

NMBBULL Vol. 41, No. 40, Oct. 3, 2002

Conduct resulting in rule violation:

1) 16-803(D) Failure, on seven occasions, to cooperate with Disciplinary Counsel by not responding to lawful requests for information regarding a complaint that had been filed against him.

Juarez, Anna L.

See rules 16-103, 16-104(A), 16-105(A), 16-116(D), 16-302, 16-801(B), 16-804(D), 16-804(H)

Disciplinary No. 04-99-371

NMBBULL Vol. 39, No. 30, Jul 27, 2000

Conduct resulting in rule violation:

- 1) 16-803(D) Failure to communicate with the disciplinary authority including having been called 11 times by them without responding.
- 2) Failure to meet terms of probation, including obeying disciplinary authority rules, producing a report from a therapist indicating that lawyer is psychologically fit to continue the practice of law, and the timely return of client's documents

Fleming, William C.

See rules 16-103, 16-104(A), 16-302, 16-801(B), 16-804(D), 16-804(H)

Disciplinary No. 10-99-377

NMBBULL Vol. 39, No. 30, Jul 27, 2000

Conduct resulting in rule violation:

1) 16-803(D) Failure to respond to four letters from disciplinary authority seeking to investigate client's complaint

Cordova, Camille

See rules 16-101, 16-103, 16-104(A), 16-105(A), 16-116(D), 16-801(B), 16-804(D), 16-804(H)

Disciplinary No. 12-95-292

NMBBULL Vol. 37, No. 36, Sept 3, 1998

Conduct resulting in rule violation:

- 1) 16-803(D) Failure to respond to demands for information from the Disciplinary Board

Zorn, Jonathan E.

See rules 16-801(B), 16-804(D)

Disciplinary No. 11-69-309

NMBBULL Vol. 36, No. 19, May 8, 1997

Conduct resulting in rule violation:

1) 16-803(D) Failure to cooperate with the Disciplinary Board when they were conducting an investigation of a complaint; for example, failure to respond to requests for information from the Board.

Klein, Don

See rules 16-101, 16-102, 16-103, 16-104, 16-303, 16-304, 16-804(H)

Disciplinary No. 07-92-221

NMBBULL Vol. 34, No. 26, June 29, 1995

See also NMBBULL Vol. 34, No. 20, May 18, 1995

Conduct resulting in rule violation:

1) 16-803(D) Failure to respond to requests for information from disciplinary counsel during investigation of a complaint

Worley, Gregory D.

See rules 16-101, 16-103, 16-302, 16-801(B), 16-804(D), 16-804(H)

Disciplinary No. 07-93-241

NMBBULL Vol. 33, No. 25, Jun. 23, 1994

Conduct resulting in rule violation:

1) 16-803(D) Failure to respond to several requests for information from disciplinary counsel followed by a failure to file an Answer once formal disciplinary charges had been filed, resulting in the charges being deemed admitted.

Jason, Elza

See rules 16-103, 16-104

Disciplinary No. 04-90-188

Reprimand Issued: September 7, 1990

Conduct resulting in rule violation:

1) 16-803(D) Despite numerous time extensions and numerous reminder letters which provided notice that disciplinary charges were pending on the basis of the lawyer's non-response, lawyer failed to timely cooperate with disciplinary counsel in responding to client's complaint regarding the lawyer's inaction on a probate matter.

Shattuck, Joseph E.

See rules 16-804(D), 16-804(H)

Disciplinary No. 10-89-174

NMBBULL Vol. 29, No. 29, July 19, 1990

Conduct resulting in rule violation:

1) 16-803(D) Over the course of ten complaints from former clients and being the subject of five occasions on which formal charges were filed, lawyer repeatedly failed to cooperate with disciplinary counsel by failing to respond to complaints or requests for information.

Shattuck, Joseph E.

Disciplinary No. 08-88-148

NMBBULL Vol. 28, No. 36, Sept. 7, 1989

Conduct resulting in rule violation:

1) 16-803(D) After being ordered by the Disciplinary Board to refund \$2000 to a former client as a condition of a Formal Reprimand in January 1989, lawyer failed repay the former client until he was nearly held in contempt by the New Mexico Supreme Court.

Kisluk, Dick

See rules 16-404, 16-503(B), 16-503(C), 16-804(C), 16-804(D), 16-804(H)

Disciplinary No. 03-89-163

NMBBULL Vol. 28, No. 35, Aug. 31, 1989

Conduct resulting in rule violation:

1) 16-803(D) Lawyer initially denied ever having sent more than one offensive card to a former client with whom he had hostile relations or ever having purchased such cards, however, after formal charges had been filed against him, lawyer was able to make a more 'diligent inquiry' revealing that more than one card had in fact been purchased by and sent from his office.

Shattuck, Joseph E.

See rules 16-115(C), 16-804(D), 16-804(H)

Disciplinary No. 08-88-148

NMBBULL Vol. 28, No. 7, Feb. 16, 1989

Conduct resulting in rule violation:

1) 16-803(D) After a complaint was filed regarding the lawyer's refusal to refund a \$2000 retainer fee despite having been discharged by the client the day after being retained, the lawyer failed to properly respond to and further failed to cooperate with disciplinary counsel's request that lawyer deposit \$2000 into his trust account pending the outcome of disciplinary counsel's investigation.

Bloomfield, Gerald R.

See rules 16-101, 16-103

See old rules 6-101(A)(2), 6-101(A)(3)

Disciplinary No. 01-88-132

NMBBULL Vol. 27, No. 50, Dec. 15, 1988

Conduct resulting in rule violation:

1) 16-803(D) After initially providing a summary response to a complaint against him, lawyer failed to provide a detailed response as promised, and subsequently failed to file a response when formal disciplinary charges were brought against him or appear at a hearing on the disciplinary charges.

Rivera, Robert L.

See rules 16-104, 16-804(B)

Disciplinary No. 10-87-125

NMBBULL Vol. 27, No. 37, Sept. 15, 1988

Conduct resulting in rule violation:

1) 16-803(D) Lawyer failed to respond to initial inquiry from disciplinary counsel; response to second inquiry arrived two weeks late, and lawyer failed entirely to respond to a third inquiry requesting a more detailed response to the complaint lodged against him.

Sandoval, Jess

See rules 16-103, 16-104(A), 16-104(B)

Disciplinary No. 08-87-122

NMBBULL Vol. 27, No. 27, July 7, 1988

Conduct resulting in rule violation:

1) 16-803(D) Lawyer's responses to inquiries from the disciplinary board regarding a complaint that had been lodged against him were clearly slow and erratic.

Lucero Jr., Chris

See old rule 1-101(C)

Disciplinary No. 06-84-46

NMBBULL Vol. 24, No. 9, Feb. 28, 1985

Conduct resulting in rule violation:

1) 16-803(D) In response to inquiry from disciplinary counsel regarding an excessive fee, lawyer asserted that under the terms of his contract he was entitled to keep all of a \$2000 'flat fee' or retainer fee, despite having been discharged by the client after only a few weeks. When the lawyer refused to provide detailed information regarding criteria that disciplinary counsel use to determine if a fee is excessive, he violated Rule 16-803(D).

16-804: Misconduct.

It is professional misconduct for a lawyer to:

- A. violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- B. commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- C. engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- D. engage in conduct that is prejudicial to the administration of justice;
- E. willfully violate the Supreme Court Rules on Minimum Continuing Legal Education or the New Mexico Plan of Specialization, or the board regulations promulgated under the authority of the rules or the plan;
- F. state or imply an ability to influence improperly a government agency or official;
- G. knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- H. engage in any conduct that adversely reflects on his fitness to practice law.

Olona, Arthur G.

See rules 16-801(B), 16-803(D)

Disciplinary No. 11-98-358

NMBBULL Vol. 41, No. 40, Oct. 3, 2002

Conduct resulting in rule violation:

- 1) 16-804(D) Failure, on seven occasions, to respond to lawful requests for information from Disciplinary Counsel regarding complaint that had been filed against him.
- 2) 16-804(H) Failure, on seven occasions, to respond to lawful requests for information from Disciplinary Counsel regarding complaint that had been filed against him.

Costa, Maria R.

See rules 16-101, 16-103, 16-104(A), 16-302, 16-303(A)(1), 16-304(C)

Disciplinary No. 08-98-353

Reprimand Issued: August 17, 2001

Conduct resulting in rule violation:

- 1) 16-804(C) In a written motion to reinstate cause of action following dismissal caused by lawyer's failure to comply with a court order compelling discovery, lawyer falsely represented to the court that the discovery documents at issue had been prepared and were ready for delivery to opposing counsel, when in fact this was not true.
- 2) 16-804(D) Failure, without justification, to comply with court's order compelling discovery, directly causing her client's cause of action to be dismissed.
- 3) 16-804(D) Failure on two consecutive occasions to attend hearings or file motions in response to opposing counsel.
- 4) 16-804(D) In a written motion to reinstate cause of action following dismissal caused by lawyer's failure to comply with a court order compelling discovery, lawyer falsely represented to the court that the discovery documents at issue had been prepared and were ready for delivery to opposing counsel, when in fact this was not true.
- 5) 16-804(H) Failure, without justification, to comply with court's order compelling discovery, directly causing her client's cause of action to be dismissed.
- 6) 16-804(H) Failure to inform client that case had been dismissed due to lawyer's inaction and failure to consult client before filing a motion to reinstate client's cause of action.
- 7) 16-804(H) Failure on two consecutive occasions to attend hearings or file motions in response to opposing counsel.
- 8) 16-804(H) Misrepresented to court that discovery materials at issue had been prepared and were ready for delivery to opposing counsel, when this was not true.

Schoeppner, John J.

See rules 16-101, 16-103, 16-104, 16-105(C), 16-108(E), 16-116(D), 16-302,

Disciplinary No. 02-99-370

[NMBBULL Vol. 39, No. 49, Dec 7, 2000](#)

Conduct resulting in rule violation:

- 1) 16-804(C) Misrepresented to client that he would litigate a second and unrelated claim for free as a favor, failed to ever take any action on second claim.
- 2) 16-804(C) Repeatedly assured client that claim would be resolved within a few weeks, when this was not the case.
- 3) 16-804(D) Failure to respond to a plea offer from the prosecutor in a criminal case, causing the prosecutor to assume that client wanted to go to trial
- 4) 16-804(H) Confusion regarding status of client; lawyer claimed that he thought client was a fugitive despite having twice objected to prosecutor's motions to extend time before trial, both of which had stated that client was in custody

Juarez, Anna L.

See rules 16-103, 16-104(A), 16-105(A), 16-116(D), 16-302, 16-801(B), 16-803(D)

Disciplinary No. 04-99-371

[NMBBULL Vol. 39, No. 30, Jul 27, 2000](#)

Conduct resulting in rule violation:

- 1) 16-804(D) Evasive and uncooperative conduct in relation to the disciplinary authority.
- 2) 16-804(H) Allowed client to believe that complaint had been served when in fact it had not been served.

Fleming, William C.

See rules 16-103, 16-104(A), 16-302, 16-801(B), 16-803(D)

Disciplinary No. 10-99-377

[NMBBULL Vol. 39, No. 30, Jul 27, 2000](#)

Conduct resulting in rule violation:

- 1) 16-804(D) Failure to provide divorce papers in a timely fashion
- 2) 16-804(D) Failure to cooperate with investigation of disciplinary authority
- 3) 16-804(H) Failure to inform client of change in hearing date
- 4) 16-804(H) Failure to provide divorce papers in a timely fashion
- 5) 16-804(H) Failure to cooperate with investigation of disciplinary authority

Rutledge, Thomas A.

Quickel, William

See rules 16-301, 16-404, 16-501(B)(1)

Disciplinary Nos. 09-97-333 and 09-97-334 (consolidated)

NMBBULL Vol. 38, No. 10, Mar 11, 1999

Conduct resulting in rule violation:

1) 16-804(D) Prosecutors improperly attempted to influence the outcome of a trial by filing a frivolous motion attacking the partiality of a judge that was later shown to be completely without merit.

Baca, Henry J.

See rules 16-303(A)(1), 16-303(A)(4)

No disciplinary number given

NMBBULL Vol. 38, No. 9, Mar. 4, 1999

Conduct resulting in rule violation:

1) 16-804(C) To aid a former client's Motion to Reconsider Final Judgment due to confusion regarding retention of counsel, lawyer deliberately made a false statement in an affidavit that the client had provided him a \$200 check for legal consultation in January 1996. Lawyer later admitted that he actually received the check in August 1996 and had been aware it was post-dated back to January 1996 for the purpose of deceiving the court.

Cordova, Camille

See rules 16-101, 16-103, 16-104(A), 16-105(A), 16-116(D), 16-801(B), 16-803(D)

Disciplinary No. 12-95-292

NMBBULL Vol. 37, No. 36, Sept 3, 1998

Conduct resulting in rule violation:

- 1) 16-804(D) Told client that correspondence had been sent to both judge and opposing council, when in fact such correspondence was never received.
- 2) 16-804(D) Failure to provide new address and telephone number to Supreme Court Clerk's office and the office of disciplinary council obstructed Board's attempt to investigate complaint.
- 3) 16-804(H) Told client that delay in obtaining appointment with Court Clinic was due to clinic backlog, when in fact delay was caused by untimely filing.
- 4) 16-804(H) Failure to communicate in an effective and timely manner with the Disciplinary Board.
- 5) Violated rule 17-202(A) by failing to file a supplemental statement notifying State Bar and Supreme Court of New Mexico of current address.

Compton, James C.

See rule 16-108(A)

Disciplinary No. 10-95-284

NMBBULL Vol. 36, No. 19, May 8, 1997

Conduct resulting in rule violation:

- 1) 16-804(C) Earned approximately \$38,000 over a two year period working 'on the side' without telling partners in law firm, while using firm's resources including offices, staff and equipment.
- 2) 16-804(C) Without telling his partners, formed his own paralegal company, and then charged the firm for paralegal services over and above what was received by the paralegal herself.
- 3) 16-804(H) Dishonest by omission toward partners in his law firm

Zorn, Jonathan E.

See rules 16-801(B), 16-803(D)

Disciplinary No. 11-69-309

NMBBULL Vol. 36, No. 19, May 8, 1997

Conduct resulting in rule violation:

1) 16-804(D) Obstructed Disciplinary Board's attempt to investigate a complaint by failing to respond to demands for information, despite having been contacted by them numerous times over a period of several months.

Traub, Rosemary

See rules 16-101, 16-103, 16-108(E), 16-116(A), 16-302

Disciplinary No. 02-93-228

NMBBULL Vol. 34, No. 35, Aug 31, 1995

Conduct resulting in rule violation:

- 1) 16-804(C) Repeated misrepresentations to client in divorce action including telling her client that orders had been obtained, that a deposition had been taken, that an appeal had been taken, that hearings were scheduled, and that final divorce papers had been signed when none of it was true.
- 2) 16-804(D) Misrepresented to client that divorce action was proceeding, failure to advance interests of client in divorce action
- 3) 16-804(H) Serious misrepresentations to client amounting to complete dishonesty

Klein, Don

See rules 16-101, 16-102, 16-103, 16-104, 16-303, 16-304, 16-803(D)

Disciplinary No. 07-92-221

NMBBULL Vol. 34, No. 26, June 29, 1995

See also NMBBULL Vol. 34, No. 20, May 18, 1995

Conduct resulting in rule violation:

- 1) 16-804(H) Failure attend scheduled meeting with client
- 2) 16-804(H) Failure to attend pretrial hearing in divorce case
- 3) 16-804(H) Failure to inform client of scheduled hearing regarding child custody and support
- 4) 16-804(H) Failure to inform client of order entered regarding child custody and requiring client to pay interim child support in divorce case

Worley, Gregory D.

See rules 16-101, 16-103, 16-302, 16-801(B), 16-803(D)

Disciplinary No. 07-93-241

NMBBULL Vol. 33, No. 25, Jun. 23, 1994

Conduct resulting in rule violation:

- 1) 16-804(D) Despite having filed a timely Notice of Appeal, lawyer failed to file a docketing statement for his client in a criminal case.
- 2) 16-804(D) Failure to respond to several requests for information from disciplinary counsel followed by a failure to file an Answer once formal disciplinary charges had been filed, resulting in the charges being deemed admitted.
- 3) 16-804(H) Despite having filed a timely Notice of Appeal, lawyer failed to file a docketing statement for his client in a criminal case.

Ellis, James C.

See rules 16-304(C), 16-305(B)

Disciplinary No. 10-91-212

NMBBULL Vol. 31, No. 20, May 14, 1992

Conduct resulting in rule violation:

- 1) 16-804(D) During an improper ex-parte communication in which a judge's signature on an order was sought and obtained, failed to advise the judge that opposing counsel had not waived the usual notice requirement for a hearing and was unaware that the order provided for the immediate transfer of custody of a two year old child.
- 2) 16-804(H) During an improper ex-parte communication in which a judge's signature on an order was sought and obtained, failed to advise the judge that opposing counsel had not waived the usual notice requirement for a hearing and was unaware that the order provided for the immediate transfer of custody of a two year old child.

Sprague, Joseph T.

See rules 16-115(A), 16-115(B), 16-116(D)

Disciplinary No. 01-91-202

NMBBULL Vol. 30, No. 25, Jun. 20, 1991

Conduct resulting in rule violation:

1) 16-804(D) Failure to terminate representation in an orderly fashion resulted in the client needing to locate and retain alternate legal counsel on the day of a domestic relations proceeding. Further, the client was unable to contact the lawyer or retrieve his original documents because the lawyer had moved to Texas and failed to provide the client with his new contact information. Lastly, upon returning to New Mexico, the lawyer admitted to disciplinary board counsel that he had lost the client's file.

Gay, Gordon L.

See rule 16-101

Disciplinary No. 09-90-195

NMBBULL Vol. 30, No. 18, May 2, 1991

Conduct resulting in rule violation:

2) 16-804(D) Failure to object to or move to suppress statement by codefendant, which the Prosecution used at least four times during trial1) 16-804(D) Lawyer inexperienced in criminal defense accepted appointment from Public Defender to work on a felony child abuse resulting in death case. Following conviction, the case was reversed and remanded on appeal due to ineffective assistance of counsel. The appellate court opinion provided the basis upon which the Disciplinary Board found a violation of Rule 16-101, and was focused on the following:

3) Failure to protect defendant's attorney-client privilege in regards to defense requested mental examinations

4) 16-804(D) Failure to prepare for trial and interview expert witnesses regarding their testimony.

5) 16-804(D) The Disciplinary Board noted that this attorney had worked in New Mexico for over thirty years with no prior disciplinary record, and that the incompetence found was limited to a singular criminal matter and was attributable to the lawyer's lack of experience in criminal litigation.

Quintana, N. Tito

See rules 16-105(A), 16-105(C)

Disciplinary No. 02-90-181

NMBBULL Vol. 29, No. 39, Sept. 27, 1990

Conduct resulting in rule violation:

- 1) 16-804(D) Lawyer retained an unreasonable fee upon the conclusion of a contingency fee matter.
- 2) 16-804(D) Lawyer failed to provide his client with a written accounting of the recovery, remittance to client, and the method of determining the amount of the remittance to a client upon the conclusion of a contingency fee matter.

Ellis, James C.

See rule 16-401(A)

Disciplinary No. 89-10-175

NMBBULL Vol. 29, No. 39, Sept. 27, 1990

Conduct resulting in rule violation:

1) 16-804(C) In an attempt to obtain information about a doctor he was suing, lawyer improperly had subpoena duces tecum issued to third party hospital where the doctor also had work privileges. When contacted by the attorney for the third party hospital, lawyer misrepresented that subpoena had been issued in connection with a deposition, when this was not true. Further, the lawyer misrepresented that the doctor's lawyer had notice of the subpoena, when this was not true. Lastly, the lawyer misrepresented that the doctor's lawyer had told him that he had no objection to the lawyer reviewing the doctor's confidential file, when this was not true.

2) 16-804(D) Made three false statements of fact to a third party in the course of attempting to obtain information about a doctor he was suing in a malpractice case.

3) 16-804(H) Made three false statements of fact to a third party in the course of attempting to obtain information about a doctor he was suing in a malpractice case.

Shattuck, Joseph E.

See rule 16-803(D)

Disciplinary No. 10-89-174

NMBBULL Vol. 29, No. 29, July 19, 1990

Conduct resulting in rule violation:

- 1) 16-804(D) Over the course of ten complaints from former clients and being the subject of five occasions on which formal charges were filed, lawyer repeatedly failed to cooperate with disciplinary counsel by failing to respond to complaints or requests for information.
- 2) 16-804(H) Over the course of ten complaints from former clients and being the subject of five occasions on which formal charges were filed, lawyer repeatedly failed to cooperate with disciplinary counsel by failing to respond to complaints or requests for information.

Kisluk, Dick

See rules 16-404, 16-503(B), 16-503(C), 16-803(D)

Disciplinary No. 03-89-163

NMBBULL Vol. 28, No. 35, Aug. 31, 1989

Conduct resulting in rule violation:

- 1) 16-804(C) Lawyer denied sending more than one offensive card to a former client or ever having purchased such cards, however, investigation revealed that cards had been purchased by mail with a check drawn from the lawyer's office account, that check had been signed by the lawyer, and that more than one card had been sent from his office.
- 2) 16-804(C) Lawyer explained to disciplinary counsel that someone had been making obscene phone calls to his office and bothering his secretary, however, his secretary did not recall ever having received such calls.
- 3) 16-804(D) Lawyer and possibly one of lawyer's employees sent offensive cards, presumably in retaliation, to former clients who had filed complaints against the lawyer with the disciplinary board.
- 4) 16-804(H) Lawyer admitted sending one offensive card to a former client who had filed a complaint against him with the disciplinary board. The disciplinary board emphasized that the disciplinary process was established by the Supreme Court to serve as a legitimate means by which the public can seek redress for grievances against attorneys, and emphasized that public participation in this process must be protected.

Shattuck, Joseph E.

See rules 16-115(C), 16-803(D)

Disciplinary No. 08-88-148

NMBBULL Vol. 28, No. 7, Feb. 16, 1989

Conduct resulting in rule violation:

- 1) 16-804(D) After a complaint was filed regarding the lawyer's refusal to refund a \$2000 retainer fee despite having been discharged by the client the day after being retained, the lawyer failed to properly respond to and further failed to cooperate with disciplinary counsel's request that lawyer deposit \$2000 into his trust account pending the outcome of disciplinary counsel's investigation.
- 2) 16-804(H) After a complaint was filed regarding the lawyer's refusal to refund a \$2000 retainer fee despite having been discharged by the client the day after being retained, the lawyer failed to properly respond to and further failed to cooperate with disciplinary counsel's request that lawyer deposit \$2000 into his trust account pending the outcome of disciplinary counsel's investigation.

Wilson, Margaret S.

See rule 16-116

See old rules 1-102(A)(6), 2-110(A)(2), 2-110(A)(3)

Disciplinary No. 06-87-118

NMBBULL Vol. 27, No. 44, Nov. 3, 1988

Conduct resulting in rule violation:

1) 16-804(H) Four months after being retained to handle an employment medical insurance matter, lawyer informed her clients by letter that she had decided to discontinue the practice of law and would be immediately withdrawing from their case. However, in the letter the lawyer failed to provide any means by which her clients could contact her, resulting in the clients spending several months and experiencing substantial frustration as they sought answers to their inquiries, attempted to ascertain the location of their file, sought the refund of \$900 in unearned advance fees, and attempted to locate alternative counsel.

Rivera, Robert L.

See rules 16-104, 16-803(D)

Disciplinary No. 10-87-125

NMBBULL Vol. 27, No. 37, Sept. 15, 1988

Conduct resulting in rule violation:

1) 16-804(B) Lawyer knowingly violated section 2-11-9 of New Mexico's Lobbyist Regulation Act, which requires all persons who engage in lobbying to register with the Secretary of State, and the violation of which can be a misdemeanor, by engaging in lobbying for the Specialty Tobacco Council yet deliberately failing to register.

James, James D.

See rules 16-104, 16-115(B), 16-116, 16-801

See old rules 1-101(C), 1-102(A)(5), 2-110(A)(3), 6-101(A)(3), 9-102(B)(3), 9-102(B)(4)

Disciplinary No. 12-86-105

NMBBULL Vol. 26, No. 35, Sept. 3, 1987

Conduct resulting in rule violation:

1) 16-804(H) Failure to communicate with and to return the property of a client who had retained the lawyer from prison, even after being discharged by the client.

Privette, H. Gregg

See rules 16-101, 16-103, 16-304

See old rules 1-102(A)(5), 1-102(A)(6), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), 7-106(C)(7)

Disciplinary No. 06-86-87

NMBBULL Vol. 26, No. 15, April 9, 1987

Conduct resulting in rule violation:

1) 16-804(D) Despite an adequate performance at the trial level, untimely submission of Notice of Appeal and docketing statement in combination with severely deficient content in the docketing statement required the Court of Appeals to ‘bend over backwards’ to avoid shortchanging the due process rights of client.

2) 16-804(H) Untimely filing of Notice of Appeal and docketing statement, severely inadequate content in docketing statement, and repeated noncompliance with procedural rules constituted an entire course of conduct that reflected adversely on lawyer’s fitness to practice law.

Blackhurst, H. Richard

See rules 16-101, 16-103, 16-801(B)

See old rules 1-101(C), 1-102(A)(5), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(3)

Disciplinary No. 86-02-1130

NMBBULL Vol. 25, No. 37, Sept. 11, 1986

Conduct resulting in rule violation:

1) 16-804(D) Failure to note, as required by law, presence of a third party lien on bill of sale for a mobile home.

2) 16-804(D) Despite initially filing motions on behalf of clients in a bankruptcy proceeding, lawyer failed to request hearing or take any other action on the matter, resulting in the clients being denied any opportunity to be heard at all.

3) 16-804(H) Failure to note, as required by law, presence of a third party lien on bill of sale for a mobile home.

4) 16-804(H) Despite initially filing motions on behalf of clients in a bankruptcy proceeding, lawyer failed to request hearing or take any other action on the matter, resulting in the clients being denied any opportunity to be heard at all.

5) 16-804(H) After initially requesting extension of time, failed to respond to inquiries from Disciplinary Counsel, despite receiving two more letters.

Silko, John

See rules 16-101, 16-115(B)

See old rules 1-102(A)(6), 7-101(A)(3), 9-102(B)(4)

Disciplinary No. 03-85-58

NMBBULL Vol. 25, No. 2, Jan. 9, 1986

Conduct resulting in rule violation:

1) New Mexico attorney who was working for an out of state collection agency became embroiled in a fee dispute with his client. The attorney betrayed his client by writing to the state regulatory authority requesting that his client not be licensed as a collection agency in New Mexico until the dispute between himself and his client was resolved. Also, he wrote to several of his client's customers advising them that his client might no longer be legally licensed as a collection agency in New Mexico.

Cherryholmes, Tom

See rules 16-305(C)

See old rules 1-102(A)(5), 1-102(A)(6), 7-102(A)(8), 7-106(C)(6)

Disciplinary No. 01-85-54

NMBBULL Vol. 24, No. 42, Oct. 17, 1985

Conduct resulting in rule violation:

- 1) 16-804(B) When a police officer attempted to approach the bench after being sworn as a witness and placed under the rule concerning the exclusion of witnesses, lawyer approached the officer, pressed his nose against the officer's nose, and ordered him out of the courtroom.
- 2) 16-804(B) After a failed attempt at holding the door shut to prevent a second police officer's access to the courtroom, shoved officer back towards the door.
- 3) 16-804(B) When the first police officer who had been barred from the courtroom re-entered the courtroom, the lawyer shoved him out of the door as well.
- 4) 16-804(B) When the deposition of an adverse party was unable to continue due to the failure of deponent to bring many of the items requested by subpoena, the lawyer pushed deponent.
- 5) 16-804(D) When the deposition of an adverse party was unable to continue due to the failure of deponent to bring many of the items requested by subpoena, the lawyer pushed deponent.
- 6) 16-804(H) When the deposition of an adverse party was unable to continue due to the failure of deponent to bring many of the items requested by subpoena, the lawyer made a snide and inappropriate remark to opposing counsel.

Bell, Ronald Alan

See rule 16-107(A)

See old rules 1-102(A)(2), 1-102(A)(4), 1-102(A)(5), 5-105

Disciplinary No. 09-84-49

NMBBULL Vol. 24, No. 26, June 27, 1985

Conduct resulting in rule violation:

1) 16-804(A) To prevent a former client from getting a default judgment entered against him, when lawyer could not represent former client due to a conflict of interest, lawyer prepared pleadings and enlisted the aid of another to falsely sign and then file the pleadings.

2) 16-804(C) Lawyer participated in misrepresenting to the court that his former client had prepared, signed and filed pleadings pro se to avoid a default judgment being entered against him, when in fact the lawyer prepared the pleadings, and the lawyer's girlfriend forged the former client's signature and filed the pleadings.

3) 16-804(D) Lawyer participated in misrepresenting to the court that his former client had prepared, signed, and filed pleadings pro se, when this was not the case.

Butler, Wycliffe V.

See rules 16-303(D), 16-304(C)

See old rules 1-102(A)(6), 7-102(A)(3), 7-106(C)(7)

Disciplinary No. 09-84-52

NMBBULL Vol. 24, No. 20, May 16, 1985

Conduct resulting in rule violation:

- 1) 16-804(H) Failed to advise the judge at an ex-parte hearing that opposing party was represented by counsel and had requested notice of hearing.
- 2) 16-804(H) Deceived the judge at an ex-parte hearing by failing to advise her that photos of his client's injuries were over three months old.
- 3) 16-804(H) Deceived the judge at an ex-parte hearing seeking a restraining order by failing to advise her that the opposing party had not attempted to contact his client since the incident in question.
- 4) 16-804(H) Willfully violated Rule 66(b) of the New Mexico Rules of Civil Procedure by failing to notify opposing counsel of an upcoming hearing.

Bova, V. Arthur

See old rules 1-102(A)(4), 1-102(A)(5), 1-102(A)(6)

Disciplinary No. 01-84-39

NMBBULL Vol. 24, No. 9, Feb. 28, 1985

Conduct resulting in rule violation:

- 1) 16-804(C) During negotiations with insurance adjuster for first accident, lawyer submitted medical bill from a second unrelated accident- without comment or explanation- and failed to correct the adjuster when he made a settlement offer based in part on the second unrelated accident.
- 2) 16-804(D) Pursued proper claim against City of Albuquerque, based in part on a correct medical bill, after already having received erroneous payment on the same bill from an insurance adjuster, thereby attempting to be paid twice for the same bill.
- 3) 16-804(H) Pursued at trial a proper claim against City of Albuquerque, based in part on a correct medical bill, after already having received erroneous payment on the same bill from an insurance adjuster, thereby attempting to be paid twice for the same bill.

Duran, Peter G.

See rules 16-103, 16-801(B)

See old rules 1-101(C), 1-102(A)(5), 6-101(A)(3), 7-101(A)(1)

Disciplinary No. 06-83-30

NMBBULL Vol. 23, No. 18, May 3, 1984

Conduct resulting in rule violation:

1) 16-804(D) Lawyer ignored or refused to accept three pieces of correspondence from disciplinary counsel regarding complaints from clients for lack of diligence.

Long, Stephen C. M.

See rule 16-115A

See old rules 1-102(A)(1), 1-102(A)(6), 9-102

Disciplinary No. 01-83-20

Reprimand Issued: July 15, 1983

Conduct resulting in rule violation:

- 1) 16-804(A) Lawyer voluntarily brought himself to the attention of the disciplinary board and apologized for intentionally borrowing \$9000 from his client's trust funds to pay for his own unrelated personal and business expenses.
- 2) 16-804(H) Lawyer knowingly borrowed \$9000 from his client's trust funds to pay for his own unrelated personal and business expenses.

McCulloch Jr., L.A.

See old rule 2-103(A)

Disciplinary No. 12-81-6

Reprimand Issued: January 21, 1983

Conduct resulting in rule violation:

1) 16-804(H) At a time when the Code of Professional Responsibility still prohibited the solicitation of clients, lawyer sent a letter to approximately 200 people in the restaurant business that did not have liquor licenses. In the letter, lawyer touted himself as an expert in the liquor license field, and offered his legal services to those who wished to obtain such licenses.

Perrine, John

See rule 16-108(H)

See old rules 1-102(A)(5), 6-102(A)

Disciplinary No. 12-81-7

NMBBULL Vol. 21, No. 51, Dec. 23, 1982

Conduct resulting in rule violation:

1) 16-804(D) On three separate occasions lawyer failed to respond to requests for information from disciplinary counsel.

Disciplinary Note

See rules 16-401, 16-403, 16-404

NMBBULL Vol. 36, No. 34, Aug. 21, 1997

Conduct resulting in Disciplinary Notice:

1) 16-804(D) Letters sent by personal injury lawyers to insureds attempting to persuade the insured that their insurance company had acted in bad faith by refusing to settle, and that the insured should threaten to sue their insurance company for not settling, if they did not have a genuine basis in fact or law, could be construed as prejudicial to the administration of justice.

Disciplinary Note

See rules 16-102(D), 16-303(D)

NMBBULL Vol. 28, No. 19, May 11, 1989

Conduct resulting in Disciplinary Notice:

- 1) 16-804(A) Refiling a matter in an attempt to obtain a different judge, and failure to disclose that the matter has already been decided upon, in combination with the filing of a false affidavit stating that the client has not previously participated in any litigation concerning the identical matter, constitutes a violation of the prohibition against engaging or assisting in conduct which misleads the court.
- 2) 16-804(C) Nondisclosure that an identical matter has been previously adjudicated before a different tribunal, in combination with the filing of a false affidavit stating that the client has not previously participated in any litigation concerning the matter constitutes a violation of the prohibition against engaging in conduct involving dishonesty and misrepresentation.

Disciplinary Note

See old rule 1-102(A)(5)

NMBBULL Vol. 25, No. 6, June 30, 1986

Conduct resulting in Disciplinary Notice:

1) An attorney maintained that since a witness had failed to ask the process server for his witness fee at the time he was served with a subpoena, according to a technical reading of Rule 45(c) of the Rules of Civil Procedure the witness was not entitled to be paid. While the Disciplinary Board acknowledged that the witness should have requested his fee at the time he was served, it was generally felt that such a hyper-technical reading of Rule 45(c) was a little ridiculous and might have a chilling effect on the discovery process. Further, the rigid position of this attorney did little to enhance the reputation of the profession, and if taken to the extreme such uncompromising tactics could constitute conduct prejudicial to the administration of justice.

Disciplinary Note

See rules 16-102(D), 16-301

See old rules 1-102(A)(5), 7-102(A)(1), 7-102(A)(8)

NMBBULL Vol. 25, No. 1, June 2, 1986

Conduct resulting in Disciplinary Notice:

1) In a small New Mexico town, an assistant district attorney conditioned the offering of a plea agreement on the defendant's making a \$2500 contribution to an undercover narcotics operation. The \$2500 was not a condition of probation, would not have been a matter of record with the court, and would have at no point been subject to judicial scrutiny. When the defendant refused to pay, the attorney proceeded to offer complete immunity to co-defendants in exchange for their testimony against the defendant. The Disciplinary Board described this conduct as clearly prejudicial to the administration of justice, bordering on extortion, and conduct that could easily be construed as vindictive and taken out of spite or in retribution. Despite the Disciplinary Board's characterization of this conduct as 'highly unethical', no formal charges were sought against the attorney because the practice was found to be commonplace in that district. However, future reports of such behavior will be the subject of formal disciplinary proceedings.

Disciplinary Note

See rule 16-116(D), 16-301, 16-302

See old rules 1-102(A)(5), 2-110(A)(2), 7-101(A)(3), 7-102(A)(1)

NMBBULL Vol. 24, No. 10, Mar. 7, 1985

Conduct resulting in Disciplinary Notice:

1) 16-804(D) An attorney became extremely irritated with a client's former spouse, who was consistently late with support checks. Several show cause hearings were held to enforce adherence to a more regular payment schedule. After one such hearing, the former spouse was ordered to pay arrearages by a certain date. While the arrearages eventually were in fact paid by that date, by that point the former spouse was slightly behind with the payment currently due. The attorney quickly obtained a writ of garnishment, without contacting opposing counsel. By the time the writ was executed, however, the former spouse had already sent the current payment, and so canceled payment on the current check. The Disciplinary Board advised against allowing one's personal feelings to interfere with one's client's best interests, and said that such conduct if taken to the extreme could prejudice the smooth administration of justice.

Disciplinary Note

See old rule 1-102(A)(4)

NMBBULL Vol. 23, No. 39, Sep. 27, 1984

Conduct resulting in Disciplinary Notice:

1) 16-804(C) During a primary election campaign, several candidates for judicial office who had never been members of the judiciary ran advertisements that implied that they had judicial experience. The statements included “A Judge Who Will Serve with Integrity” and “A Judge with Experience in District Court”. Disciplinary Counsel contacted the candidates, who gave assurances that the advertisements would not be repeated. However, in the future, the Disciplinary Board will view such statements as attempts to deceive the electorate, and as such violative of the prohibition against engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Disciplinary Note

See rules 16-102(D), 16-304(B)

See old rules 1-102(A)(4), 7-102(A)(6)

NMBBULL Vol. 23, No. 24, June 14, 1984

Conduct resulting in Disciplinary Notice:

1) 16-804(C) An attorney wrote to his client to inform her that a hearing had been scheduled in a civil case against her. The client then called the attorney to explain that she would be out of state and unable to attend the hearing. After the client did not appear at two hearings, a default judgment was entered against her. Several months later the client called the attorney and asked if there was anything he could do. The attorney then drafted a motion to set aside the default judgment which stated that the client had no notice of the hearing and that due to an error of the postal service the attorney had not known of his client's whereabouts. The client refused to sign the motion because she felt it was inaccurate and contacted Disciplinary Counsel. At the disciplinary hearing, the attorney explained that by notice he had meant legal notice. The Hearing Committee accepted his explanation and found that there was no intent to defraud, that no false evidence had been created, and the charges were dismissed. The Committee stated, however, that had the motion been signed by the client and presented to the court, there would have been misconduct warranting disciplinary action.

Disciplinary Note

See rule 16-102(A)

See old rule 1-102(A)(4)

NMBBULL Vol. 25, No. 12, Mar. 22, 1984

Conduct resulting in Disciplinary Notice:

1) 16-804(C) A lawyer who was representing a woman in a claim for damages was unable to contact his client over the weekend after learning on a Friday that the hearing would be held the next Monday. When his client failed to appear on Monday morning, rather than have the case dismissed the lawyer agreed to a settlement with opposing counsel, without consulting his client. He then informed the court that the case had been settled.

Disciplinary Counsel felt that telling the court that the case had been settled was a misrepresentation because it implied that the client had consented to the settlement, when in fact she had not.

Disciplinary Note

See rules 16-105(A)

See old rules 1-102(A)(6), 2-106

NMBBULL Vol. 23, No. 10, Mar. 8, 1984

Conduct resulting in Disciplinary Notice:

1) 16-804(H) Three weeks before a scheduled divorce hearing, an attorney withdrew from a case because his client had failed to make a payment. The attorney then asserted an attorney's lien on the case file and a possessory lien upon a book that the client had gratuitously loaned him. Upon reviewing the matter, Disciplinary Counsel felt that the attorney misused his position when he asserted the lien against the book, because it is essential to the existence of the attorney's possessory lien that the property be received by the attorney in the course of professional employment, and not by way of a friendly gesture. During the course of the investigation, the attorney returned the book, but was cautioned that conduct of this sort could cast doubt on his fitness to practice law.

Disciplinary Note

See old rule 1-102(A)(6)

NMBBULL Vol. 23, No. 5, Feb. 2, 1984

Conduct resulting in Disciplinary Notice:

1) 16-804(H) An attorney drafted a sales contract for his client who was selling her home. The agreement provided for \$10,000.00 to be paid on the date of closing. On the date of the scheduled closing, however, the mortgagee had not approved the buyer's assumption of the mortgage. Pursuant to an oral agreement between the parties, the buyer took possession and gave the attorney the \$10,000 to be held in escrow until the closing. The sale was ultimately never consummated because the mortgagee refused to approve the buyer's assumption of the mortgage. When the buyer demanded the return of her money, the attorney refused unless the buyer would agree to the deduction of a substantial amount in fees incurred by the seller. Upon reviewing the matter, Disciplinary Counsel determined that when the attorney refused to return the buyer her money, he acted improperly, because his obligation to act in his client's best interest, and retain the money, was superceded by his duties as an escrow agent. The attorney was informally admonished for his violation of the prohibition against engaging in conduct that reflected adversely on his fitness to practice law.

16-805:Jurisdiction.

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.