

## 17-307. Investigation of complaints.

A. **Initiation.** Chief disciplinary counsel, deputy disciplinary counsel or assistant counsel designated by the chair of the Disciplinary Board shall initiate all investigations, whether upon complaint or otherwise. Investigations shall be conducted by disciplinary counsel staff attorneys or referred to an appropriate assistant counsel or commissioned investigator for report and recommendations. Investigations, examinations and verifications shall be conducted so as to preserve the private confidential nature of the lawyer's records insofar as is consistent with these rules and law.

B. **Disposition prior to formal investigation.** If the complaint does not set forth allegations which if true state reasonable cause to believe that a respondent-attorney has violated the Rules of Professional Conduct, a disciplinary counsel staff attorney may dismiss the complaint, provided that all doubts shall be resolved in favor of conducting a formal hearing. Within thirty (30) days after receipt of a complaint, if the allegations are serious enough to warrant a formal investigation the office of disciplinary counsel shall notify the respondent-attorney of the nature of the complaint. Upon good cause shown to the Supreme Court, the court may order the delay in notifying the respondent-attorney of the pending investigation. Upon the request of any person affected by a dismissal, or *sua sponte*, the chair of the Disciplinary Board may, at any time, order an investigation of a complaint that has been dismissed by a disciplinary counsel staff attorney.

C. **Procedure of formal investigation.** Prior to the filing of a formal specification of charges with the Disciplinary Board the respondent-attorney shall always be advised of the general nature of the allegations and shall be given a fair opportunity to present any matter of fact or mitigation the respondent-attorney wants disciplinary counsel to consider. With the consent of the respondent-attorney, disciplinary counsel may conduct any part of the investigation in the form of an informal hearing allowing parties to present evidence and requiring them to answer questions in compliance with Rule 17-306 NMRA.

D. **Investigation report.** If disciplinary counsel determines the file should be reviewed by a reviewing officer pursuant to Paragraph B of Rule 17-104 NMRA, disciplinary counsel shall write a brief summary report to include the following:

- (1) a summary statement of the facts of the situation with reference to the provisions of the Rules of Professional Conduct or other rule or law claimed to have been violated, and a statement of whether or not the investigator believes that there is probable cause to believe any violation has occurred;
- (2) a statement of the opposing positions of the parties and of the facts disciplinary counsel believes would find support in the evidence, together with an analysis of the probable result of a hearing in the event formal charges were filed;
- (3) the investigator's recommendations for further handling in accordance with this rule.

E. **Review prior to filing formal charges.** Any deputy disciplinary counsel or assistant counsel designated by the chair of the Disciplinary Board shall present a draft of the proposed specification of charges to chief disciplinary counsel prior to filing the specification of charges. Chief disciplinary counsel shall either:

- (1) approve the filing of the specification of charges; or
- (2) recommend an alternate course of action consistent with these rules.

F. **Special counsel; special board.** If an investigation pursuant to Paragraph A of this rule appears appropriate, whether upon complaint filed or otherwise, relating to disciplinary counsel, a member of a hearing committee, or a member of the board; relating to a spouse, parent, child or sibling of disciplinary counsel or a board member; or relating to a partner or associate of a board member, the matter shall proceed in accordance with these rules except that:

- (1) the board shall appoint a special counsel, who shall proceed in accordance with Paragraph B of Rule 17-105 NMRA; and
- (2) if the respondent is a member of the board or is a spouse, parent, child or sibling of a board member, the chief justice shall appoint a special board consisting of three members of the bar to hear the case and to report its findings, conclusions and recommendations directly to the Supreme Court.