

17-306. Required presence of attorney; subpoena power.

A. During investigation.

(1) Disciplinary counsel, at any stage of an investigation after the respondent-attorney has been notified of the investigation, may serve interrogatories on the respondent-attorney. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them. The respondent-attorney shall serve a copy of the answers and objections, if any, to the office of disciplinary counsel within thirty (30) days after service of the interrogatories. The chair of the Disciplinary Board may allow a shorter or longer time in which to file answers upon a motion filed by either the respondent-attorney or disciplinary counsel within ten (10) days of service of the interrogatories on the respondent-attorney. The interrogatory answers may be used by disciplinary counsel at any future hearings in the investigation.

(2) Disciplinary counsel at any stage of an investigation after the respondent-attorney has been notified of the investigation, may request or invite the respondent-attorney to appear before a reviewing officer and answer questions related to allegations under investigation by disciplinary counsel. The invitation or request shall be accompanied by a statement from disciplinary counsel describing the allegations being investigated and the areas about which the respondent-attorney will be asked to comment. At an appearance before a reviewing officer, the respondent-attorney has a right to the presence of counsel, the right to make opening and closing statements and the right to introduce documentary evidence. A taped record will be made of the respondent-attorney's responses, a copy of which will be provided to the respondent-attorney.

(3) The chair of the Disciplinary Board, at any stage of the investigation after the respondent-attorney has been notified of the investigation, may issue a subpoena for the production of records and other documents of the respondent-attorney or any other witness necessary to the investigation as well as for requiring the presence and testimony of witnesses or the respondent-attorney under oath. The respondent-attorney shall have notice of the subpoena, shall have the right to be present and cross-examine witnesses and shall have the right to be accompanied by counsel.

(4) If it appears that the respondent-attorney or a witness may alter, destroy, secrete or remove from the jurisdiction of this state any books, records, documents or other evidence relevant or material to an investigation, at any stage of the investigation, disciplinary counsel, if authorized by the Disciplinary Board may petition the Supreme Court for an order to compel the attendance of witnesses before a hearing committee and the production before a hearing committee of any books, records, documents or other evidence relevant or material to an investigation before notifying the respondent-attorney. The petition shall contain or have attached a sworn written statement of facts showing probable cause to believe that the records may be altered, destroyed, secreted or removed from the State of New Mexico. Any and all proceedings before the Supreme Court pursuant to this subparagraph shall be conducted in camera and shall be kept under the seal of the Supreme Court.

B. Hearings. At request of either disciplinary counsel or the respondent-attorney, the chair of a hearing committee may issue subpoenas:

(1) requiring the presence of witnesses at a formal hearing before a hearing committee or the Disciplinary Board. The subpoena shall set forth the time and place at which the witness is to appear;

(2) commanding the person to whom it is directed to produce at a formal hearing before a hearing committee the books, papers, documents or tangible things designated therein. The subpoena shall set forth the time and place at which the person is to appear with the documents.

C. Contents. No subpoena shall be issued pursuant to this rule unless it sets forth:

(1) the reason or purpose for the investigation or hearing;

(2) with reasonable definiteness, any records or other documents to be produced which are relevant to the investigation or hearing; and

(3) a statement that the witness has a right to be accompanied by counsel.

D. Enforcement.

(1) Failure to cooperate with an investigation of the Disciplinary Board, or failure to respond to letters from disciplinary counsel regarding an investigation shall be grounds for submission of a motion to the Supreme Court to order that the offending respondent-attorney be held in contempt of court.

(2) If any person fails to comply with a subpoena issued by the chair of the Disciplinary Board or the chair of a hearing committee in accordance with the provisions of this rule or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, at the request of the officer issuing the subpoena, disciplinary counsel may apply to the Supreme Court for an order directing that person to take the requisite action. The Supreme Court may issue such order or may quash the subpoena. Should any person willfully fail to comply with an order of the Supreme Court, the court may punish such person for contempt of court. Any person who has been served with a subpoena pursuant to this rule may apply to the Supreme Court for an order to quash such subpoena.

[As amended, effective August 31, 1995.]